STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: TEX-CAL LAND MANAGEMENT, INC., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 81-CE-64-D, et al. (11 ALRB No. 31) ORDER DENYING UFW'S MOTION FOR RECONSIDERATION AND MODIFYING BOARD DECISION

PLEASE TAKE NOTICE that the UFW's Motion for Reconsideration is hereby DENIED. In its Decision and Order, the Board did not fail to consider Respondent's failure to timely remit dues and employee benefit plan contributions in cur consideration of the totality of circumstances. Indeed, the Board's Order contains a provision requiring Respondent to cease and desist from such conduct.

However, in view of Charging Party's question whether the Board considered the totality of circumstances in assessing Respondent's bad faith, our previous Decision is modified in the following respect. A footnote is added to the last paragraph on Page 24:

> Contrary to the ALJ, we do not find the record supports the conclusion that Respondent's failure to timely tender contributions to the benefit funds was an obstacle to the parties' reaching agreement. Furthermore, the showing that Respondent failed to remit the dues until grievances had been filed does not compel a finding that Respondent was motivated by union animus. Thus, while the evidence supports a finding of a violation of section 1153(e) and (a) with regard to the failure to timely remit dues, we reject the ALJ's further

conclusion that Respondent also violated section 1153(c) in this respect. In the context of our finding concerning Respondent's at-the-table conduct, we have declined to weigh heavily our previous findings of bad faith in Tex-Cal Land Management, Inc. (1985) 11 ALRB No. 28.

By Direction of the Board.[1/2/]

DATED: January 29, 1986

JANET VINING
Executive Secretary, ALRB

1. Member Henning would grant the Motion for Reconsideration.

2. Chairperson James-Massengale did not participate in this matter.

Delano, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

TEX-CAL LAND MANAGEMENT, INC., and DUDLEY M. STEELE , Respondents, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	Case Nos. 81-CE-64-D, 81-CE-74-D, 81-CE-203-D, 82-CE-66-D, 82-CE-66-1-D, 82-CE-66-2-D, 82-CE-66-3-D, 82-CE-79-D, S2-CE-134-D, 82-CE-146-D, 82-CE-186-D 11 ALRB No. 31

DECISION AND ORDER

On November 2, 1983, Administrative Law Judge (ALJ) Beverly Axelrod issued the attached Decision. Thereafter, the Respondents filed exceptions and supporting briefs. The Charging Party filed a brief in answer to Respondents' exceptions.

The Agricultural Labor Relations Board (Board)[1/] has considered the record and the ALJ's Decision in light of the exceptions and briefs and the answering brief and has decided to affirm the rulings,[2/] findings, and conclusions of the ALJ except

[1/] The signatures of Board Members in all Board Decisions appear with the signature of the Chairperson first (if participating), followed by the signatures of the participating Board Members in order of their seniority.

[2/] During the hearing Respondent Tex-Cal Land Management, Inc., sought to have the ALJ rule that the Board should defer certain issues to arbitration. We find that the ALJ was correct in denying those motions. Deferral to arbitration is not appropriate in cases such as this where the basic thrust of the charges is that the employer's actions were designed to undermine the status of the Union. Under such circumstances the arbitral process could not be expected to function effectively because of the extreme degree of distrust that is likely to exist between the parties.

Fn. 2 cont. on p. 2

as modified herein and to adopt her recommended Order with modifications.[3/] The Board has also decided to rescind its Order of August 17, 1984, whereby this matter was consolidated with Case No. 83-CE-7-D, et al., for purposes of review by the Board. We find such consolidation to be inadvisable due to the procedural and analytical problems it would create. Our decision in this regard creates no prejudice as the parties have not changed their previously briefed positions in reliance on the consolidation order.

(Fn.2 cont.)

(See Collyer Insulated Wire (1971) 192 NLRB 837 [77 LRRM 1931]; United Technologies Corp., et al. (1984) 268 NLRB 557 p. 15 LRRM 1281].) However, we do not adopt the ALJ's suggestion that since the National Labor Relations Act (NLRA) uniquely contains provisions which specifically favor arbitration, the ALRB should employ a less liberal policy toward deferral than does the National Labor Relations Board (NLRB). At this point we have no basis in fact for concluding that California agriculture generally is less well suited to arbitration than are industries subject to the NLRA.

With regard to the ALJ's ruling on the proposed testimony by Respondents' expert witness, Dr. David Friedman, we find that in light of Respondents' refusal to make available any of the records on which the proposed testimony was based and its failure to substantiate an inability to present testimony from other knowledgeable sources, the ALJ was correct in excluding the expert testimony in the form in which it was proffered.

[3/]Although there was no allegation in the complaint that Respondent had unilaterally changed its employment application, the ALJ found that such a change had taken place, that it unlawfully effected a change in the working conditions of Respondent's employees and that the issue had been fully litigated at the hearing. Contrary to the ALJ, we do not find that a general reference to the employment application in the collective bargaining agreement transformed the application into an immutable term and condition of employment. Moreover, there was no showing by the General Counsel or the ALJ as to any actual impact, or reasonable likelihood of such impact, resulting from the changes (i.e., slight differences in information requested and a change of document title). For these reasons, we do not affirm the ALJ's conclusion that the changes in the employment application form constituted an unlawful unilateral change.

THE STATUS OF RESPONDENT D.M. STEELE

Respondent Dudley M. Steele, Jr., (hereinafter "Steele" or "D. M. Steele") was, until 1979, President of Respondent Tex-Cal Land Management, Inc. (hereinafter "TCLM"), a company whose primary business consists of growing and harvesting table grapes. At the time of his resignation as an officer of TCLM, Steele transferred ownership of all his stock in that company to his son Randy, who assumed the office vacated by his father. During the period relevant to the complaint herein, D.M. Steele conducted business with TCLM through a number of companies or enterprises which he owns.[4/] These include: Tex-Cal Land, Inc., which leases land to TCLM for farming and owns the cold storage facility where TCLM stores its grapes; Tex-Cal Sales, Co., broker and marketer for TCLM's grape crop; Styro-Tech, Inc., which makes the grape packing boxes that TCLM uses; and Tex-Cal Supply Co., which services and maintains TCLM's farming equipment. Considerable evidence was received at the hearing on the question of whether D.M. Steele was a single integrated employer with Respondent TCLM for the purposes of the Act. The ALJ determined that single employer status was established and both TCLM and D.M. Steele have excepted to that finding. We find the exception to have merit.

[4/] In the same year that he divested himself of TCLM stock and resigned as TCLM's President, D.M. Steele executed a power of attorney whereby his son Randy, the new president of TCLM, was empowered to act on behalf of D.M. Steele in all business matters, including the voting of stock in corporations controlled by D.M. Steele. While this fact is indicative of a relationship of trust between D.M. Steele and his son, it does little to advance the more relevant inquiry of whether D.M. Steele ever actually relinquished his controlling influence or position with TCLM.

We, like the ALJ, begin our analysis with the four-factor test used by the NLRB for determining whether two or more entities should be treated as a single employer. Those factors are: (1) interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership or financial control. (Abatti Farms (1977) 3 ALRB No. 83; Radio & Television Broadcast Technicians Local 1264 v. Broadcast Serv., Mobil, Inc. (1965) 380 U.S. 255, 256 [58 LRRM 2545] (per curiam).) Here, one of the four factors, common ownership, is entirely absent,[5/] while another, interrelation of operations, is obviously present to some degree. With regard to the latter, we note the ALJ's findings that some of the dealings between TCLM and Tex-Cal Sales were less rigid than comparable agreements between TCLM and other parties; that Tex-Cal Sales was the only broker authorized to use TCLM's labels; that D.M. Steele leased some of his own property to TCLM; and that TCLM personnel watched over the adjoining offices of D.M. Steele. However, we must also take into account that TCLM leased land from some 21 other parties; that the testimony does not indicate that the cold storage facilities owned by D.M. Steele were used exclusively by TCLM; and that, aside from the provisions in the agreements between TCLM and Tex-Cal Sales which are somewhat less rigorous than those in agreements between TCLM and other parties, there is little to demonstrate that transactions between TCLM and D.M. Steele's companies were at less

[5/]We have previously held that common ownership does not arise from the simple fact of consanguinity. (Signal Produce Co. (1978) 4 ALRB No. 3.) D.M. Steele had transferred all stock in TCLM to his son Randy Steele and retained no ability to vote that stock.

than arm's length. Thus, while there was a close working relationship between TCLM and the D.M. Steele companies, the evidence concerning the interrelation of operations does not establish that Steele and TCLM were a single employer.

Regarding the factor of common management, the ALJ found that "although Mr. Steele did not have any legal authority over Respondent's farming operations by virtue of position or contract, he in fact exercised actual control over farming operations, instructing TCLM's harvest supervisor on harvest decisions." In describing the key testimony on this point, the ALJ states that "Mr. Steele was consulted about harvest decisions before [TCLM's harvest supervisor] acted," and that "Mr. Steele sometimes came out to the fields to talk with [TCLM's harvest supervisor] about the harvest." We find that the ALJ's description of the testimony more nearly comports with the facts than does the ALJ's actual finding. Steele was interested in obtaining certain varieties of grapes at a certain time because one of his businesses, Tex-Cal Sales, acts as a broker and a marketer for TCLM's grape crop. TCLM relied on Steele's assessment of the market, but was under no apparent compulsion to accept and follow directives from Steele as to how the work should be carried out. What the ALJ construed as control by one company over the actions of another was instead a process of consultation which was needed for the benefit of both firms and which did not rise to the level of common management.

The ALJ infers centralized control of labor relations from two facts: D.M. Steele's photographing the 1981 picketing of TCLM's office, and Steele's attendance at a grievance meeting

between TCLM and the Union in 1982. We do not consider these incidents sufficient indicia of a common control of labor relations policies. While demonstrating an understandable, albeit a none-too-subtle interest in the labor force which worked on the land he leased to TCLM, Steele's control over the labor relations policies of TCLM was at best potential. The NLRB has held that common control must be actual or active as distinguished from potential control. (Gerace Construction, Inc. (1971) 193 NLRB 64.5 [78 LRRM 1367, 1368].) Factors which might imply actual or active control are absent from this case: there was no interchange of employees, no use of common supervisors, and no common structuring of wages, hours or other terms and conditions of employment. (See Signal Produce Co., Brock Research, Inc. (1978) 4 ALRB No. 3.)

In each of the ALRB cases where two functionally interrelated entities were found to be a single employer, at least one of the other criteria—common management, common ownership, and common control of labor relations--was also well-established. (See, e.g., Holtville Farms, Inc., et al. (1984) 10 ALRB No. 49; Nakasawa Farms and B. J. Hay Harvesting (1984) 10 ALRB No. 48; Pappas and Company (1984) 10 ALRB No. 27; Valdora Produce Co. and Valdora Produce, Inc. (1984) 10 ALRB No. 3; Pioneer Nursery/River West, Inc. (1983) 9 ALRB No. 38; Perry Farms, Inc. (1978) 4 ALRB No. 25; Abatti Farms, et al. (1977) 3 ALRB No. 83.) That situation does not obtain in the instant case. What evidence there is of common management and common control of labor relations does not reveal a state of overall interrelatedness on a par with that

of the above-cited cases. Viewing the circumstances as a whole, we cannot conclude that Tex-Cal Land Management and D.M. Steele constitute a single employing entity.

In light of our conclusion in this regard, it is unnecessary for us to rule upon D.M. Steele's procedural contention that holding him liable for any unfair labor practices would constitute a denial of due process for reasons of inadequate notice.

HIRING OF ADDITIONAL CREWS FOR THE 1981 HARVEST

The ALJ concluded that Respondent violated Labor Code section 1153(c) and (a)[6/] by hiring additional harvest crews in the 1981 harvest for the purpose of reducing work for its regular bargaining unit employees. She based this conclusion on the participation of Respondent's regular crews in picketing activity on June 22, 1981 and on August 3, 1981, Respondent's use of at least double the number of crews in the 1981 harvest than had been used in the 1980 harvest, a substantial reduction of work for the regular crews in the 1981 harvest, and anti-union animus as evidenced by Respondent's history of violations of the Act and its supervisors' hostility toward workers in the wake of the picketing. Respondent's business justification for the hiring of the extra crews was that hotter weather in 1981 caused the grapes to ripen more quickly and that more Thompson seedless grapes were being grown that year. The ALJ found that "while conditions justified the use of some additional crews in 1981, Respondent's use of those crews was excessive for its asserted needs, and

[6/] All section references herein are to the California Labor Code unless otherwise specified.

resulted in a reduction of the work hours for its regular crews."

It is clear that with respect to the pre-harvest periods that are part of the overall harvest period for both the early and late grapes, Respondent's employment patterns reflect a reduction in the amount of work for its regular crews. Respondent's own analysis of payment records for selected crews, as set forth at page 50 of its Exceptions Brief, shows that substantially fewer hours were worked by those crews in the 1981 preharvest periods than were worked by them in the comparable periods for 1980.[7/] Other data cited by Respondent confirms complaints by regular crew members that, contrary to the normal practice, they received less than a full day's work during the pre-harvest period which followed the first picketing incident. It is also noteworthy that upon completion of the early grape harvest, there was a layoff of about two week's duration which included not only the new crews, but also several of the regular crews. Contrary to past practice, the pre-harvest for the late grapes was then conducted in a one-week period after a recall of all the crews, new and regular, that had been on layoff. We, like the ALJ, are convinced that the delay and subsequent acceleration of work which occurred at the expense of some of Respondent's regular workers, was done in retaliation for the employees having engaged in protected activities.

With respect to the actual harvest period, however, the records show that, as compared with the harvest of 1980, there

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[7/] Respondent derives figures representing average hours per person per day. The fact that these figures are about the same for 1980 and 1981 is of little import since the key consideration is the total number of hours worked.

was generally no loss of work to members of Respondent's regular crews. In fact, for most of the crews where employees testified there had been a loss of work, there was actually an increase in hours for the 1981 harvest period as compared with the 1980 harvest period. Since, as the ALJ acknowledged, Respondent needed some extra crews during the 1981 harvest, and because there was no demonstrable loss of work during the harvest period proper, we cannot conclude that, as to the harvest period proper, Respondent employed extra crews for the purpose of reducing work opportunities for its regular crews. We therefore find that Respondent's utilization of extra crews was unlawful only with respect to the two pre-harvest periods during the 1981 harvest season.[8/]

The ALJ further found that Respondent violated section 1153(e) and (a) by failing to notify the Union of the hiring of additional crews for the 1981 harvest. At the time of the hirings, a collective bargaining agreement was not in existence, but, under the expired contract, Respondent was to provide notification of hirings. The notification provision was, in effect, a standing request for information. If the matter about which the information is sought is a mandatory subject of bargaining, observance of the notification provision, although part of an expired contract, would be required. (See Tex-Cal Land Management (1982) 8 ALRB No. 85.)

While the hiring process, in and of itself, may not

[8/] The number of pre-harvest crews that would have been used absent the unlawful motivation can be ascertained during the compliance phase of these proceedings.

constitute a term or condition of employment, it may, in certain situations, impinge on the work available to current employees and concern an issue over which bargaining is compulsory. (See Western Mass. Electric Co. v. NLRB (1978) 573 F.2d 101 [98 LRRM 2851].) Here, it appears that the Union relied upon the notification of hiring provision to inhibit the subcontracting of unit work, a practice by Respondent which the Union had objected to as causing a loss of work for Respondent's regular crew members and which the ALJ found, under the circumstances of this case, constituted a violation of section 1153(a), (c) and (e). Thus, the Union's insistence on compliance with the notification of hiring provision was directed at a mandatory subject of bargaining and, although the provision was contained in an expired agreement, it continued as a term or condition of employment. For these reasons, we uphold the ALJ's finding that Respondent violated section 1153(e) and (a) of the Act by failing to provide the Union with notification of all hirings for the 1981 harvest season.

HIRING DURING THE 1982 HARVEST

The ALJ found certain of Respondent's hirings during the 1982 harvest season to be violative of section 1153(e) and (a) of the Act because they were effectuated without proper notice to or bargaining with the Union. The 1981-82 collective bargaining agreement had established a notification procedure which required that Respondent give two day's written notice of its intention to hire and an estimate of the number of workers to be hired. Respondent's practice of hiring qualified people on a first-come, first-served basis continued, subject to the notification provision

and a customary family preference policy. These procedures and policies constituted terms or conditions of employment which Respondent was required to observe despite the expiration of the 1981-82 collective bargaining agreement. (Tex-Cal Land Management, Inc. (1982) 8 ALRB No. 85.) We agree with the ALJ that the hirings of June 17, 1982, and August 17-25, 1982, were not conducted in accordance with the required procedures and thereby violated section 1153(e) and (a) of the Act.

The ALJ further found an independent 1153(a) violation in connection with the hiring of August 17 at the "jailhouse." She determined that the hiring was conducted in a manner that served to embarrass and undercut the Union and thereby tended to undermine the employees' free and effective choice of a bargaining representative. We agree with Respondent that these findings are not supported by the evidence.

The Union was notified by Respondent on August 16, 1982, that hiring would take place at the "jailhouse" (an informal hiring center) early the next morning. The written notice was defective in that it did not come 48 hours in advance and did not contain an estimate of the number of workers to be hired. Nevertheless, the notification to the Union resulted in approximately 200 prospective employees showing up at the "jailhouse" before dawn on the morning of August 17. Respondent had only intended to hire about a dozen employees that morning and expected to fill another 30 openings the next day. Five of the eleven applicants hired that morning had been procured by a management employee and arrived at the hiring site with him. The Union representative who was

present that morning complained that those applicants were being hired on other than a first-come, first-served basis.

The Union was unable to determine in advance how many persons Respondent intended to hire that morning. Nevertheless, the evidence indicates that the Union went out of its way to have the largest possible crowd show up at the jailhouse. It also appears that Respondent was genuinely surprised at the extraordinary turnout and was looking for a reasonable way to cope with the situation. We do not believe that Respondent could reasonably have foreseen the consequences of its failure to fully comply with the notification provision. As in TMY Farms, Inc. (1983) 9 ALRB No. 29, any interference with section 1152 rights here "was not a natural consequence of Respondent's action." The ALJ's reliance on Nagata Bros. (1979) 5 ALRB No. 39 is misplaced since the employer's action there was a direct interference with the Union's ability to communicate with workers. While we agree that Respondent violated section 1153(e) and (a) by hiring workers in August 1982 without proper notice to and bargaining with the Union, we decline to further conclude that the manner in which Respondent carried out that hiring constituted an independent 1153(a) violation.

DISCONTINUANCE OF SWAMPING TRUCKS

The ALJ found that Respondent violated section 1153(e) and (a) when, during the 1982 harvest, it discontinued use of its own swamping trucks without proper notice to or bargaining with the Union. She apparently believed that Respondent's unilateral decision had an impact on wages and working conditions because,

under her analysis, it caused a loss of some work for Respondent's regular swampers. Respondent cited blown engines, dropped loads and insurance problems as the reasons for the switch to an outside trucking service, but the ALJ rejected this justification on the basis that no evidence was offered in support of it.

Initially, we take cognizance of the fact that there is no allegation that the change was made for the purpose of discriminating against Respondent's regular employees. We next observe that the change concerned deficiencies in Respondent's operations which are not of the type that are ordinarily amenable to resolution through the collective bargaining process. Labor costs were not shown to be a factor in the decision and there would be little the Union could do to find alternative solutions. (See First National Maintenance Corp. v. NLRB (1981) 101 S.Ct. 2573 [107 LRRM 2705].) It was, however, the type of decision which might normally call for bargaining over effects, as opposed to bargaining over the decision itself.

Concerning the effects of the decision, we note the fact that the same number of bargaining unit employees were utilized on the subcontracted trucks (which came with their own drivers), as were used on the 7 or 8 discontinued company trucks, which needed one of the two swampers to serve as a driver. In 1981, 12 or 13 of the 20 trucks used by Respondent in its swamping operations were provided by the subcontractors. Assuming that Respondent utilized as many subcontracted trucks in 19.82 as were needed to perform the swamping operations that year, there was no less work for bargaining unit employees than there would have been had

Respondent used company trucks. Since the General Counsel has not demonstrated that the use of subcontracted trucks had any perceptible impact on the continued availability of employment, we cannot conclude that the change required bargaining over the effects of the decision. (See First Nat'l Maintenance Corp. v. NLRB, supra, 101 S.Ct. 2573.)

We thus conclude that Respondent's elimination of its own swamping trucks in the 1982 harvest did not constitute a violation of section 1153(e) and (a).

CONVERSION OF ACREAGE FROM TABLE GRAPES TO RAISINS

Yet another allegation stemming from the 1982 harvest concerns Respondent's conversion of certain vineyards from table grape production to raisin production, the latter being a permissible item for subcontracting under the collective bargaining agreement. The ALJ found the conversion to be a unilateral act whereby Respondent reduced harvest work for Respondent's regular workers, without notice to or bargaining with the Union, in violation of section 1153(e) and (a) of the Act. Respondent excepts to this finding on the ground that the conversion constitutes an economically-motivated crop change decision and, as such, is not subject to bargaining under the holding of this Board in Cardinal Distributing Co., Inc. (1983) 9 ALRB No. 36. We find the exception to have merit.

It was not alleged that the conversion was used as a means of discriminating against Respondent's regular workers and there is no evidence that the conversion was undertaken by Respondent in order to reduce its labor costs. Rather, the only

evidence on the record indicates that the conversion was dictated solely by marketing considerations. The change had the potential for reducing the amount of work available for Respondent's regular employees because of the provision in the 1981-82 collective bargaining agreement which permitted Respondent to subcontract harvest work for its raisin crop. In 1981, Respondent's acreage totals were 1,745 for table grapes and 160 for raisins. In 1982, Respondent converted almost 1,000 acres of its table grapes to raisins; after the conversion, the acreage totals stood at 768 for table grapes and 1,097 for raisins.

The essence of our holding in Cardinal, was that

> Generally, a decision by management regarding what crop to grow or discontinue is not subject to the collective bargaining process. Although such managerial decisions may substantially affect conditions of employment, we do not impose a mandatory duty to bargain about such decisions. An agricultural employer must retain the freedom to make such decisions because they are a basic right that lies at the core of entrepreneurial control. (9 ALRB No. 36 at pp. 5-6.)

In a subsequent case, Paul W. Bertuccio (1983) 9 ALRB No. 61, we found that the selling of an entire crop before it is harvested, like the partial closure of a business, is a decision that lies at the core of entrepreneurial control and therefore does not require bargaining. Such decisions "pertain to the basic right of management to weigh factors such as profit and risk of loss and to decide whether, and to what extent, to be in business." Ibid. at p. 4.) Those types of considerations also characterize the decision to expand or contract the acreage devoted to a particular crop. Because of the highly variable market and climatic conditions faced by the agricultural employer, well-timed changes

in the acreage devoted to particular crops are of vital importance in the employer's effort to either maintain or enhance the profitability of its operation. Together with other crop change decisions, they are the principal determinants of the nature or direction of the agricultural employer's business. As such, they are not subject to mandatory bargaining. (Otis Elevator Co. (1984) 269 NLRB No. 162 [115 LRRM 1281, 1284.]; Gar Wood-Detroit Truck Equipment, Inc. (1985) 274 NLRB No. 23 [118 LRRM 1417].)

There remains the question of whether bargaining was required over the effects of the decision as opposed to the decision itself. Although Respondent had devoted fluctuating amounts of acreage to raisin production in prior years, the magnitude of this conversion was such that it could be expected to have a significant impact on the continued availability of employment. The impact of the decision might well have been greater than the 12 percent loss in hours calculated by the ALJ (or the 4.6 percent loss in hours claimed by Respondent) but for the fact that 1982 yielded a bumper crop of table grapes. In any-event, at the time the decision was made, there was sufficient reason to believe that the impact on employment would be significant and that under the principles of First National Maintenance Corp. v. NLRB, supra, 452 U.S. 666, Respondent should have given the Union notice of the conversion and an opportunity to bargain about the effects of that decision.

1982 CONTRACT NEGOTIATIONS

The ALJ concluded that Respondent violated section 1153(e) and (a) in 1982 by engaging in surface bargaining with the Union

over a new contract to follow the 1981-82 collective bargaining agreement.[9/]

The bargaining period in question began on March 25, 1982, when the Union sent a letter to Respondent requesting that bargaining begin on a new contract to follow the 1981-82 agreement, which was to expire on June 6, 1982. The first bargaining session was held on April 27, 1982. About half of the articles of the 1981-82 collective bargaining agreement were quickly agreed to without change. After rejecting various other provisions proposed by the Union, Respondent presented its first counterproposal on May 28. Bargaining proceeded for a total of 27 sessions, ending on November 12, 1982, without the parties reaching agreement on a contract.

The ALJ determined that the allegations of bad faith bargaining centered on four main issues:

(1) Respondent's alleged failure to provide information concerning crew foremen, raisin production and subcontracting activities.

(2) Wages and pensions.

(3) Health plans, and

(4) Subcontracting.[10/]

Requests For Information

On April 8, 1982, as part of its initial request for

[9/]Prior to the negotiations here in question, Respondent and the UFW had been parties to three separate collective bargaining agreements dating back to 1978.

[10/]The ALJ does not find evidence of bad faith bargaining in the subcontracting proposals themselves, that is, in either the Union's efforts to reduce the amount of subcontracting or in Respondent's adherence to the 1981-82 language. Rather, she finds that "evidence of bad faith regarding subcontracting centers around Respondent's failure to provide relevant information on that issue."

information, the Union sought the names of all crew leaders and a list of all crops cultivated and/or harvested, including acreage and ranch numbers. Respondent declined to provide the names of its crew leaders because it had not yet selected those individuals. The Union informed Respondent that it needed the information for purposes of determining the relative seniorities of the various crews and making a proposal concerning seniority. Respondent subsequently provided the names of the only four crew foremen who were currently employed by and working for Tex-Cal.

In mid-May, the Union renewed its request for the names of the crew leaders together with their respective crew numbers, and also asked for specific production information 'relative to the 1981 harvest. Respondent replied with a list of six crew leaders (including three of the four who had appeared on the previous list). The Union claimed to know that Respondent was in fact employing more than six crew leaders. It appeared to the Union that only the names of those crew leaders who were actually working on the day of the request were being provided.

In response to another written request for the same information at the end of May, Respondent provided three more names on June 17. By September 1, Respondent had given the Union a list of all 13 crews and their leaders, listed in order of seniority.[11/]

In connection with its initial request for crop production and acreage information, the Union sought specific data for work

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[11/]We agree with Respondent that the ALJ erred in finding that the complete list was not received by the Union until October 21, 1982. The record demonstrates that the information was in the Union's possession by no later than September 1, 1982.

performed on a piece rate basis. After ascertaining that this request included Respondent's raisin operations (work which Respondent was able to subcontract under the terms of its collective bargaining agreement with the Union), Respondent conveyed the piece rates that it paid during the raisin harvest. At the May 21, 1982, session the Union indicated that it also desired raisin production information, but Respondent claimed that, because raisins were subcontracted and the raisin harvest crews were paid by the contractor, it did not maintain records which would yield such information. The Union was referred to the subcontractor for the rest of the information it wanted about raisin production.

Contrary to the ALJ's finding, we do not see any unwarranted delay or prejudice to the Union in Respondent's handling of the request for crew leader information. Where the request of an employer is to identify crew leaders who have yet to be hired, we do not find any bad faith in the employer's production of that information at such time as it decides who will be the crew leaders. With regard to the request for raisin subcontracting information, we agree with the ALJ that Respondent did not have tenable grounds for refusing the request. The information was relevant to a mandatory subject of bargaining and it was not the Union's obligation to obtain the information from one of Respondent's subcontractors.

Proposals on Wages and Pensions

At the fifth session on May 28, Respondent made its first proposals, which included a wage freeze and a freeze on the amount of pension contributions. The Union reduced its wage demand from

$5.25 to $5.15 at the next meeting. Respondent resubmitted its freeze proposals and the Union agreed to maintain the pension contribution at 10 cents/hour.

At the eleventh bargaining session on July 6, the Union dropped its demand for a guaranteed 60 hour work week. At the following session the Union dropped its wage proposal to $5.00/hr. Respondent continued to propose $4.45, which the Union claimed was 25 cents/hour less than the going wage for the industry during the harvest that was already in progress (August).

At the sixteenth and seventeenth sessions, on September 1 and 2, the Union presented an all or nothing package proposal in which the wage demand was reduced to $4.95 and coupled with acceptance of the RFK health plan. Respondent countered on September 15 with a proposed package which tied a 1 cent non-retroactive increase in wages together with an employer sponsored ORO health plan.

The Union next proposed a package involving a wage rate of $4.85/hour, which would be retroactive to the expiration of the last contract (June 1982) and continue until May 30, 1983, at which time the rate would go to $5.20/hour. Respondent countered on September 30 with a package proposal containing a $4.60/hour wage offer. The Union rejected the proposal, explaining that the going wage rate had been $4.70 since June. No further wage proposals were made during the remaining six sessions of bargaining.

Health Plan Bargaining

Employees were covered by the RFK medical plan under the 1981-82 contract. The Union initially sought the RFK Plan C

as part of the new contract. This would have added vision and dental care to the basic Plan A. Later the Union reduced its demand to Plan B, which added vision only.

Respondent desired to substitute the employer sponsored ORO plan for the RFK plan and held firm to this proposal for the first three months of bargaining. It then proposed a slightly liberalized version of the ORO plan and proposed the RFK plan packaged with Respondent's subcontracting article. The additional cost of the RFK plan above 40 cents/hour was to be paid by employee contributions.

In several respects the ORO plan, as proposed by Respondent until August 25, did not provide benefits equivalent to those employees were already receiving under the RFK Plan A. However, there were some areas, most notably that of major medical coverage, in which the ORO Plan provided greater benefits than the RFK Plan.

Totality of the Circumstances

The ALJ considered Respondent's positions with respect to the foregoing matters to be indicative of bad faith bargaining. She further found that Respondent's actions away from the table in 1981 and 1982 were indicative of an anti-union animus and, in most cases, served to "directly undercut the bargaining." She concluded that by the totality of its actions at and away from the table, Respondent did not bargain in good faith with the Union and did not intend to reach an agreement to follow the expiration of the 1981-82 collective bargaining agreement, in violation of section 1153(e) and (a) of the Act.

We find that the ALJ's analysis cannot withstand scrutiny in that it relies too heavily on an assessment of the adequacy of Respondent's wage and health plan offers and on conduct away from the table which had no apparent effect on conduct at the table.

The Board has recognized in William Dal Porto & Sons, Inc. (1983) 9 ALRB No. 4 that seemingly parsimonious wage offers are not a basis for inferring bad faith. Although we must review the totality of the parties' conduct, and in a limited way, take cognizance of the reasonableness of the positions taken by the parties in the course of bargaining, we cannot compel agreement or concessions, or sit in judgment of the substantive terms of a contract. (TMY Farms, Inc. (1983) 9 ALRB No. 10; H. K. Porter Co. v. NLRB (1970) 379 U.S. 99, 103-104 [73 LRRM 2561].) The fact that a proposal may be deemed predictably unacceptable, in the sense that the other side would clearly prefer a different term, is alone insufficient to establish that the required good faith is lacking. (NLRB v. Tomco Communications, Inc. (1978) 567 F.2d 871, [97 LRRM 2660.) Either party is entitled to use its economic strength to achieve the most favorable terms possible. Here, even assuming that Respondent's wage offer was less than the "going rate," the 10 cent an hour difference was not large enough to create doubts about Respondent's good faith in making the proposal.

The other substantive area in which the ALJ finds Respondent's proposals deficient is that of health benefits. The evidence does not support any conclusion that Respondent's proposals were predictably unacceptable, particularly in view of the greater

coverage the employer's ORO Plan afforded in the area of major medical benefits, the inclusion of a vision service plan not available under the RFK Plan A, the employer's efforts to make the ORO Plan match or exceed various aspects of the RFK Plan, and Respondent's eventual acquiescence in the RFK Plan. It is evident that the reliance on this issue as evidence of bad faith is not warranted.

Concerning Respondent's conduct away from the table, it is clear that Respondent acted in derogation of established terms and conditions of employment on a number of occasions. It is also true that in so doing it sometimes sought to discriminate against those of its employees who had engaged in union activity. However, we find that such conduct away from the table, while complicating the Union's bargaining task, is outweighed by conduct at the table which reflected an intent by Respondent to reach agreement. Respondent quickly signed off on half of the articles contained in the previous agreement (with the Union wanting to alter most of the rest), began meeting with the Union well before the expiration of the 1981-82 agreement, had its first complete counterproposal on the table prior to the contract expiration date, and engaged in a frequent and consistent scheduling of bargaining sessions.

Contrary to the ALJ's conclusion, bad faith bargaining was not evident in the positions taken by Respondent in connection with any of the major issues. Although Respondent's failure to provide the requested acreage and production information for raisins was a per se violation of its duty to bargain, it was, in the

context of bargaining table conduct, an isolated occurrence that does not appear to have had enough impact either on the Union's ability to formulate its proposals or to analyze those of the employer for us to conclude that the negotiation process was thereby frustrated to the point that no agreement was possible. It is noteworthy in this regard that the ALJ specifically found that Respondent evidenced no bad faith in its bargaining over subcontracting, the very issue for which the information in question was sought by the Union.

As Respondent's overall bargaining table conduct was consistent with an intent to reach agreement, we are reluctant to conclude that away-from-the-table factors should become the dominant consideration. (See Kaplan's Fruit and Produce Company (1980) 6 ALRB No. 36.) Therefore, in view of the totality of the circumstances, we reject the ALJ's conclusion that Respondent was engaged in a course of surface bargaining.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent Tex-Cal Land Management, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Unilaterally changing its hiring practices by failing to give notice to the United Farm Workers of America, AFL-CIO, (UFW) of new hires.

(b) Unilaterally subcontracting bargaining unit work to another agricultural employer or contracting out bargaining

unit work to a labor contractor, without prior notice to and bargaining with the United Farm Workers of America, AFL-CIO, (UFW).

(c) Failing to timely pay benefits and dues under collective bargaining agreements with the UFW.

(d) Suspending, disciplining, or otherwise discriminating against any agricultural employees because of their union activities and/or protected concerted activities.

(e) Unilaterally transferring employees to different crews.

(f) Delaying the start of cultural seasons, hiring more outside crews than are actually needed, or in any other manner manipulating its cultural practices to discriminate against its agricultural employees because of their union activities and/or protected concerted activities.

(g) Failing or refusing to give the UFW notice and, on request, an opportunity to bargain over the effects of the decision to convert grape acreage to raisin production.

(h) In any like or related manner interfering with, restraining, or coercing any agricultural employee in the exercise of the rights guaranteed by section 1152 of the Act.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Act:

(a) Make whole Lydia Rodriguez, Pascual Magallanes, Roberto Holguin, Hermenegildo Melendez, Antonia Hernandez, Esperanza Magallanes, and Teresa Realsola (Reazola) for all losses of pay and other economic losses they have suffered as a result of the discrimination against them, such amounts to be computed in

accordance with established Board precedents, plus interest thereon, computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (1982) 8 ALRB No. 55.

(b) Upon request of the UFW, the certified collective bargaining representative of Respondent's agricultural employees, rescind any and all unilateral changes instituted by Respondent with respect to hiring practices, transfer of employees, and assignment of harvesting, pruning, tying, tractor, irrigation and swamping work which was performed by members of the bargaining unit prior to July 1981.

(c) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive collective bargaining representative of Tex-Cal Land Management, Inc.'s, agricultural employees regarding the effects of the decision to convert grape acreage to raisin production, and embody any resulting understanding in a signed agreement.

(d) Make whole all of its present and former agricultural employees for all losses of pay and other economic losses they have suffered due to loss of work, such amounts to be computed in accordance with established Board precedents, plus interest thereon computed in accordance with the Board's Decision and Order in Lu-Ette Farms, Inc., (1982) 8 ALRB No. 55, as a result of the following actions by Respondent:

(1) Reducing work for its regular harvest crews in the 1981 pre-harvest due to hiring additional crews;

(2) Reducing work for its regular pruning crews in the 1982 pruning and tying season due to starting late and hiring

additional crews;

(3) Subcontracting or contracting out of swamping work, irrigation and miscellaneous work, and tractor work, in 1981 and 1982.

(e) Preserve and, upon request, make available to this Board and its agents, for examination, photocopying, and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the makewhole amounts and the amounts of backpay and interest due under the terms of this Order.

(f) Sign the Notice to Agricultural employees attached hereto and, after its translation by a Board agent into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereinafter.

(g) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees, employed by Respondent at any time during the period from July 1, 1981, until September 1, 1983.

(h) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property for 60 days, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered or removed.

(i) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all

appropriate languages, to all of its agricultural employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

(j) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply with its terms, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: December 18, 1985

JYRL JAMES-MASSENGALE, Chairperson

JOHN P. McCARTHY, Member

JORGE CARRILLO, Member

MEMBER HENNING and MEMBER WALDIE, Dissenting:

We dissent from the majority opinion in this case insofar as it reverses the Administrative Law Judge (ALJ).

The majority finds in the face of overwhelming evidence that Respondent's countless unilateral changes, abrogation of its collective bargaining duties, manifestations of anti-union animus and proclivity to seize on any opportunity to ignore and undermine the United Farm Workers of America, AFL-CIO (UFW or Union) had no effect on the bargaining process. (That bargaining process is exhaustively described by the ALJ at pp. 154-186 of her decision.) The ALJ specifically found Respondent delayed in presenting proposals, and then proffered predictably unacceptable ones regarding, for example, preservation of work. She found Respondent refused to provide information and this refusal thwarted the UFW's preparation of proposals on subcontracting and seniority. She presented a strong, indeed, overwhelming case demonstrating that Respondent did not made a sincere effort to resolve its differences

and harbored no intent to reach agreement with the UFW. (See e.g., O. P. Murphy Produce Co., Inc. (1979) 5 ALRB No. 63; As-H-Ne Farms (1980) 6 ALRB No. 9; Bruce Church Inc. (1983) 9 ALRB No. 74.)

For the reasons given in the ALJ's recommended decision, we would find that TCLM failed to bargain in good faith with the UFW and we concur in each of her findings of additional violations of the Act. We accordingly dissent and would adopt the rulings, findings, and conclusions of the ALJ and issue her recommended Order.

We also dissent from the majority's decision to, sua sponte, sever the consolidated case from this matter. The decision to sever Case Number 83-CE-7-D, et al. from this case is not based on an objection from any party since all of the participants desire consolidation. Nor is it based on some legal or factual incompatibility, for identical legal and factual issues surrounding a two and one-half year course of bargaining and labor relations between Respondents and the UFW are treated by the two cases. However, assuming that some kind of administrative efficiency is served by the severance, the resulting majority opinion remains an inadequate and cursory treatment of the voluminous factual and legal support for the ALJ's decision.

Dated: December 18, 1985

JEROME R. WALDIE, Member

PATRICK W. HENNING, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, Tex-Cal Land Management, Inc., had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by suspending seven employees in Crew 64- because of their union activities, by contracting out and subcontracting our swamping, irrigation, tractor and other work in 1981 and 1982, by hiring additional crews in the 1981 pre-harvest and 1982 pruning seasons, which resulted in a loss of work for our regular crews, by unilaterally transferring employees to different crews, by hiring workers without first notifying the United Farm Workers of America, AFL-CIO, (UFW) and by refusing to pay benefits under the 1981-82 collective bargaining agreement with the UFW. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

We also want to tell you that the Agricultural Labor Relations Act is a law that gives you and all farm workers these rights;

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to" do any of these things.

Because it is true that you have these rights, we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

Especially:

WE WILL NOT subcontract or contract out bargaining unit work or otherwise make any other unilateral change in our agricultural employees' wages, hours, or working conditions without prior notice to and bargaining with the UFW.

WE WILL restore and reassign to our employees the pre-harvest, pruning, swamping, tractor, irrigating, and other work which we illegally contracted out or subcontracted out in 1981 and 1982.

WE WILL reimburse with interest all of our present and former employees who suffered any loss in pay or other money losses because we unlawfully contracted or subcontracted out their work, or unlawfully reduced their work by hiring additional harvest crews in 1981 and additional pruning crews in 1982.

WE WILL NOT discharge, suspend, or otherwise discriminate against any agricultural employee in regard to his or her employment because he or she has joined or supported the UFW or any other labor organization, or has participated in any other protected concerted activities.

WE WILL NOT transfer employees to different crews without first bargaining with the UFW.

WE WILL reimburse with interest Lydia Rodriguez, Hermenegildo Melendez, Pascual Magallanes, Esperanza Magallanes, Roberto Holguin, Antonia Hernandez, and Teresa Reazola, for any loss in pay because we illegally suspended them in August 1982.

WE WILL make all payments to medical plans, health plans, pensions, and other provisions in any contracts we sign with the UFW.

Dated: TEX-CAL LAND MANAGEMENT, INC.

By: _____
(Representative) (Title)

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 627 Main Street, Delano, California 92315. The telephone number is (805) 725-5770.

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Tex-Cal Land Mangement, Inc.

11 ALRB No. 31
Case No. 81-CE-64—D,et.

ALJ DECISION

The ALJ found that in 1981 and 1982 Respondent, who was primarily engaged in a grape growing operation, violated the Act in the following respects:

1. Respondent violated section 1153(a), (c) and (e) by hiring excessive additional harvest crews in the 1981 harvest without notice to and bargaining with the Union, and for the purpose of reducing work for its regular bargaining unit employees.

2. Respondent violated section 1153(a) by refusing to timely pay union dues and benefits under the 1981-82 collective bargaining agreement.

3. Respondent violated section 1153(a), (c) and (e) in February 1982 by delaying the start of the pruning season and hiring excessive additional crews without notice to and bargaining with the Union, and for the purpose of reducing work for its regular bargaining unit employees.

4. Respondent violated section 1153(a), (c) and (e) by unilaterally changing its employment application form in February 1982.

5. Respondent violated section (a), (c), and (e) by subcontracting and contracting out bargaining unit work, without notice to and bargaining with the Union, and for the purpose of reducing work for its regular bargaining unit employees.

6. Respondent violated section 1153(a) and (e) in the 1982 harvest by hiring workers in June and August 1982, transferring employees in July 1982, and eliminating swamping trucks, in July 1982, without proper notice to or bargaining with the Union.

7. Respondent violated section 1153(a) in the 1982 harvest by the manner in which it hired workers in August 1982.

8. Respondent violated section 1153(a) and (e) of the Act by unilaterally converting table grape vineyards to raisins in the 1982 harvest, thus reducing the harvest work for its regular bargaining unit employees, without notice to or bargaining with the Union.

9. Respondent violated section 1153(a) and (c) of the Act in August 1982 by suspending seven members of Crew 64 because of their union activities.

The ALJ also concluded that Mr. Dudley M. Steele, father of the individual who headed Tex-Cal, was a single integrated employer with Respondent for the purposes of the Act. She rejected Respondent's contention that deferral to arbitration was appropriate as to five areas which are covered to varying degrees by contractual provisions.

The ALJ also rejected an affirmative defense by Respondent that the Union's bargaining conduct constituted bad faith bargaining in violation of Labor Code section 1154-. With the exception of two relatively minor allegations, all allegations against Respondent were considered proven.

BOARD DECISION

The Board affirmed without comment the decision of the ALJ on most of the issues but reversed or substantially modified the ALJ's disposition of the remaining issues.

Contrary to the ALJ, the Board did not find that TCLM and D.M Steele constitute a single employing entity. Using the NLRB's four factor test, the Board determined that common ownership was entirely absent, that interrelation of operations was present to a considerable degree, and that common management and common control of labor relations was not on a par with that in other ALRB cases where two functionally interrelated entities were found to be a single employer.

The Board agreed with the ALJ that, with respect to the hiring of additional crews for the 1981 harvest, Respondent's actions caused a loss of work for Respondent's regular workers and were done in retaliation for the employees having engaged in protected activities. However, the Board determined that since Respondent did need some extra crews during the actual harvest period and since Respondent's regular employees did not suffer a loss of work during that period compared to the previous year, Respondent's utilization of extra crews was unlawful only with respect to the two pre-harvest periods during the 1981 harvest season.

While agreeing with the ALJ that Respondent violated section 1153(e) and (a) of the Act by hiring workers in August 1982 without proper notice to and bargaining with the Union, the Board reversed the ALJ's finding that the manner in which Respondent carried out that hiring constituted an independent 1153(a) violation. The Board did not believe that Respondent could have reasonably foreseen the chaotic consequences of its failure to fully comply with the notification provision.

Contrary to the ALJ, the Board concluded that Respondent's elimination of its own swamping trucks in the 1982 harvest did not constitute a violation of section 1153(e) and (a). The change was considered to be the type of management decision which, like

a partial closure, goes to the core of entrepreneurial control and is therefore not appropriate for bargaining. Bargaining over the effects of the decision was not required because the General Counsel did not demonstrate that the use of subcontracted trucks had any perceptible impact on the continued availability of employment.

Respondent's conversion of certain vineyards from table grape production to raisin production was found by the Board to be a crop change decision which lies at the core of entrepreneurial control and therefore does not require bargaining. However, the Board found that conversion could have been expected to have a significant impact on the continued availability of employment and that therefore Respondent should have given the Union notice of the conversion and an opportunity to bargain about the effects of the decision.

Concerning the 1982 contract negotiations, the Board found that Respondent did not exhibit bad faith in its handling of information requests or in its proposals on wages, pensions, and health plan benefits. Respondent's conduct away from the table, while complicating the Union's bargaining task, was outweighed by conduct at the table which reflected an intent by Respondent to reach agreement. In view of the totality of the circumstances, the Board rejected the ALJ's conclusion that Respondent was engaged in a course of surface bargaining.

Respondent was ordered inter alia to make whole the seven workers it had suspended, rescind its unlawful unilateral changes upon request by the Union, bargain collectively with the Union regarding the effects of the decision to convert grape acreage to raisin production, and make whole its regular employees for the loss of work they suffered due to Respondent's hiring of additional crews in the 1981 pre-harvest, its reduction of work for the regular pruning crews in 1982, and its subcontracting or contracting out of swamping work, irrigation and miscellaneous work, and tractor work, in 1981 and 1982.

DISSENT

Members Waldie and Henning dissented from the majority opinion insofar as it reversed the opinion of the Administrative Law Judge. They would adopt the findings of the ALJ and rule inter alia, that Tex-Cal Land Management, Inc., failed to bargain in good faith with the United Farm Workers of America, AFL-CIO.

Members Waldie and Henning also dissented from the majority's decision to sever the consolidated case from its consideration. They noted that no party asked for severance and that the factual and legal issues were intimately related in the two cases.

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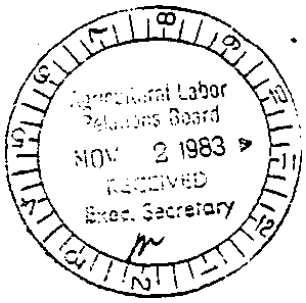

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: TEX-CAL LAND MANAGEMENT, INC., and DUDLEY M. STEELE, Respondent, And UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party	Case Nos.: 81-CE-64-D 81-CE-74-D 81-CE-203-D 82-CE-66-D 82-CE-66-1-D 82-CE-66-2-D 82-CE-66-3-D 82-CE-79-D 82-CE-146-D 82-CE-189-D

Herberto A. Sala and Manuel M. Melgoza of Delano, California, for the General Counsel

Elias Munoz of Delano, California, for the Respondent

DECISION OF ADMINISTRATIVE LAW JUDGE

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I. STATEMENT OF THE CASE

BEVERLY AXELROD, Administrative Law Officer: These cases were heard before me in Delano, California during 47 days of hearing in 1982 and 1983: October 4, 5, 6, 1, 12, 13, 14, 18, 19, 20, 21, 25, 26, 27, November 1, 2, 3, 4, 8, 9, 13, 11, 16, 17, 18, 19, 22, 23, 29, 30, December 1, 2, 6, 8, 9, 13, 14, 15, 16, all in 1982, and January 3, 4, 5, 6, l0, 11, 12, 13, 1983.[1]

Orders consolidating cases were issued on June 2, 1982, and August 27, 1982. Complaints were issued and amended as follows:

Original Complaint: June 2, 1932 (GCX:3(1J)).[2]

First Amended Complaint: July 7, 1982 (GCX:3(1L)).

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[1]References to the transcript of testimony for the hearing are given as "RT," followed by the Volume number of the transcript in Roman numerals, then the pages of testimony. The Court Reporter erroneously numbered certain volumes of testimony. In this decision they will be referred to by their correct numbers, as follows: January 4, 1983, XLI (listed as ILI); January 5, 1983, XLII (listed as ILII); January 6, 1983, XLIII (listed as ILIII); January 10, 1983, XLIV (listed as ILIV); and January 11, 1983, XLV (listed as ILV).

[2]General Counsel's Exhibits are referred to herein as "GCX." Respondent's Exhibits are referred to herein as "RX." Charging Party's exhibits are referred to herein as "CPX." Administrative Law Officer's exhibits are referred to herein as "ALOX."

Second Amended Complaint: August 5, 1982 (GCX:8 (1R)).

Third Amended Consolidated Complaint: August 27, 1982 (GCX:8 (IT)).

Fourth Amended Consolidated Complaint: November 3Ø, 1982 (during hearing). (GCX:8(1Y)).

The complaint alleges violations of Sections 1153 (a), (c), (d), and (e) of the Agricultural Labor Relations Act, herein called the Act, by Tex-Cal Land Management, Inc. and Mr. Dudley M. Steele. The General Counsel contends that Mr. Steele is a joint employer with Tex-Cal Land Management, Inc., within the meaning of the Act. This issue is discussed in Section XIV of this Decision, infra. For purposes of clarity, throughout Sections I-XIII of this Decision the term "Respondent" is used to refer solely to Tex-Cal Land Management, Inc. The specific responsibilities and obligations of Mr. Steele under the Act are discussed in Section XIV, infra.

The complaint is based on ten charges and amended charges filed by the United Farm Workers of America, AFL-CIO, herein called the Union or UFW, and by Mr. Silvano R. Reyes. The charges were filed as follows:

31-CE-64-D June 4, 1981 (UFW) (GCX:8(lA))

81-CE-74-D June 9, 1981 (UFW) (GCX:8(1B))

81-CE-2Ø3-D September 11, 1981 (UFW) (GCX:8(1C))

82-CE-66-D May 14, 1982 (UFW) (GCX:8(1D))

82-CE-66-1-D May 25, 1982 (UFW) (GCX:8(1E))

82-CE-66-2-D August 2Ø, 1982 (UFW) (GCX:8(1F))

82-CE-66-3-D August 2Ø, 1982 (UFW) (GCX:3(1G))

82-CE-79-D May 25, 1982 (UFW) (GCX:8(1H))

32-CE-146-D August 2Ø, 1982 (UFW) (GCX:8(lI))

82-CE-186-D October 7, 1982 (Reyes) (GCX:8(1X))

The charges were duly filed and served on Respondent.[3] Prior to and during the hearing Respondent moved to defer certain proceedings to arbitration under the

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[3]Charge 82-CE-79-D (GCX:3(1H)) was inadvertently omitted from the Third Amended Consolidated Complaint, and an Erratum was filed by the Delano Regional Director to that effect (GCX:8(1U)). That charge was also dropped from the caption of the Fourth Amended Consolidated Complaint (GCX:8(1Y)). In its place, the caption refers to a charge, 82-CE-134-D, not a part of this case. At the time the Fourth Amended Complaint was filed (RT XXXI:32) no mention was made of this change, and the error appears to be clerical.

Charge S2-CE-186-D (GCX:3(1X)), filed by Mr. Reyes during the hearing, was settled by the parties.

Respondent admits to proper service of all charges except 82-CE-66-3-D (GCX:8 (1G)) . This charge alleges a refusal to bargain on the part of Respondent and Mr. Dudley M. Steele. Respondent's objection to service of this charge appears simply to be the inclusion of Mr. Steele. The Proof of Service indicates that on August 20, 1982 three charges were mailed by Ms. Deborah Miller. Two of the charges, 82-CE-66-2-D and 82-CE-14S-D, were mailed to "Tex-Cal Land Management, Inc., 1215 Jefferson St., Delano, CA 93215." (See GCX;8(IF, II).) The third charge, the one in question (S2-CE-66-3-D) , was mailed to "Tex-Cal Land Management, Inc. /Dudley Steele, 1215 Jefferson St., Delano, CA 93215." (See GCS:3(IG)). Respondent does not object to any alleged failure to serve this charge in its Post-Hearing Brief. I find that all three charges were properly mailed on the same date, as indicated by the Proofs of Service. Respondent does not indicate any prejudice by the inclusion of Mr. Steele[1]s name in the service. It appears that Respondent's objection is the more general objection of including Mr. Steele as a joint employer. The issue of Mr. Steele's status is discussed in Section XIV of this Decision, infra. I find that all charges were properly served on Respondent.

collective bargaining agreement between Respondent and the Union.[4] I denied the motion. In its Post-Hearing Brief Respondent renews its motion. This issue is discussed in Section IV of this Decision, infra.

All parties were afforded an opportunity to participate in the hearing. During the hearing 53 witnesses were called,[5] and a total of 223 exhibits were offered into evidence.[6] Briefs were submitted by Respondent and the General Counsel at the close of the hearing.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the findings of fact and conclusions of law stated in the following sections of this Decision.

II. JURISDICTION

Respondent is a California corporation conducting agricultural operations in Kern and Tulare counties. It is

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[4]RX:8; GCX:8 (IN) .

[5]Appendix B lists the witnesses and gives the transcript references for their testimony.

[6]Appendices C-F list and describe the exhibits, and give transcript references for their marking for identification, introduction into evidence, rejection, or withdrawal. In three instances, the reporter's transcript incorrectly referred to an exhibit at the time it was marked and/or introduced. The correct information is given in the appendices. The incorrect references were: RT V:113 (GCX:38 incorrectly referred to as GCX:36); RT VII:105 (GCX:59 incorrectly refarrad to as GCX:58); and RT XIII:6 (GCX:88 incorrectly referred to as GCX:87).

an agricultural employer within the meaning of Section 1140.4 (c) of the Act.

The Union is a labor organization within the meaning of Section 1140.4(f) of the Act.

III. SUMMARY OF ALLEGED UNFAIR LABOR PRACTICES

The General Counsel alleges that in 1981 and 1382 Respondent engaged in a pattern of activities designed to underline and discredit the Union. The alleged unlawful activities of Respondent fall into six groups:

1. During the summer harvest season of 1981, Respondent, without notice or bargaining with the Union, unilaterally hired a large number of extra crews for the purpose of reducing work opportunities for its regular crews because of the Union activities of those regular crews. This is alleged to violate Section 1153 (a), (c) and (a) of the Act.

2. Beginning in October 1981 Respondent refused to pay union dues and benefits as required by the collective bargaining agreement between Respondent and the Union. This is alleged to violate Section 1153(a) of the Act.

3. In February 1982, Respondent, without notice or bargaining with the Union, hired additional workers for the job of pruning and tying grapevines, for the purpose of reducing work opportunities for its regular crews because of the Union activities of those regular crews.

This is alleged to violate Section 1153(a), (c), and (e) of the Act.

4. During 1981 and 1982 Respondent, without notice or bargaining with the Union, unilaterally subcontracted out bargaining unit work. This is alleged to violate Section 1153 (a), (c), and (e).of the Act.

5. During the summer harvest of 1982, Respondent engaged in a number of actions designed to discriminate against its regular workers because of their Union activities, including unilaterally changing seniority procedures, eliminating bargaining unit swamping work, discriminatorily suspending and refusing to hire pro--Union workers, and unilaterally converting some of its vineyards to raisins. These actions are alleged to violate Section 1153(a), {c), and (e) of the Act.

6. Since March 1982, Respondent has engaged in bad faith surface bargaining with the Union. This is alleged to violate Section 1153 (a) and (e) of the Act. Respondent denies the General Counsel's allegations, and also asserts that the Union engaged in bad faith bargaining in connection with item 6, above.

In addition to the above allegations, the General Counsel alleges that Mr. Dudley M. Steele is a joint employer with Respondent, within the meaning of Section 114Ø.4(c) of the Act. Respondent and Mr. Steele deny that Mr. Steele is a joint employer, and assert that Mr. Steele was denied due process by the General Counsel's insistence that Mr. Steele bargain with the Union.

IV. RESPONDENT'S MOTION TO DEFER PROCEEDINGS TO ARBITRATION

Respondent twice moved to have certain of the unfair labor charges deferred to arbitration between Respondent and the Union pursuant to the arbitration provision of the collective bargaining agreement (GCX:3(1N); RX:8). I denied those motions, and Respondent filed an appeal with the Agricultural Labor Relations Board (herein "Board" or "ALRB") (GCX:8(1P)). The Board denied Respondent's appeal, but stated that Respondent was not precluded from briefing the deferral issue in its post-hearing brief (GCX:8(1Q)). In the Post-Hearing Brief for Respondent (page 71) Respondent renews its motion. Respondent contends that the allegations relating to refusal to pay Union dues and benefits, and changes in seniority systems, should have been deferred to arbitration under the collective bargaining agreement.

The parameters of deferring unfair labor practice charges to arbitration under the Act have not been fully determined by the Board, but an analysis of the deferral practice under the National Labor Relations Act (NLRA) shows that the instant case is clearly not one in which deferral would be appropriate even under the NLRA.[7]

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[7]It may be that the deferral policy under the NLRA is more liberal than a policy under the Act, due to provisions in the NLRA which specifically favor arbitration. It is clear, however, that even under the NLRA the instant case is particularly unsuited for deferral, as explained in the text. In Sun Harvest, Inc., 81-CE-131-SAL (November 22, 1931), Administrative Law Officer Ruth M. Friedman discussed the possibility that deferral policy under the NLRA might be

The whole idea behind the deferral policy under the NLRA is that deferral to arbitration is appropriate where the parties have a stable history of successfully resolving disputes in that manner, and where there is no plausible claim that the employer is engaging in a pattern aimed at infringing upon the employees' rights. Thus in the leading case of Collyer Insulated Wire (1971) 192 NLRB 837, 77 LRRM 1931, the NLRB noted that the dispute at issue was

> "within the confines of a long and productive collective bargaining relationship. The parties have for 35 years, mutually and voluntarily resolved the conflicts which inhere in collective bargaining.... [N]o claim is made

more liberal than under the Act:

> "The federal cases are based on provisions of federal law accommodating and preferring arbitration. Arguably, the law under the Agricultural Labor Act is different. Section 10(a) of the NLRA, unlike Labor Code Section 1160, which corresponds to it, states that the power to prevent any person from engaging in an unfair labor practice 'shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise.' Section 203 (d) of the Taft-Hartley Act, which finds no parallel in the ALRA, states that "Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement.[1] Thus the NLRA, unlike the ALRA, specifically incorporates collective bargaining agreements in its enforcement scheme. Labor Code Section 1160.9 states that the procedures set forth in the chapter headed 'Prevention of Unfair Labor Practices and Judicial Reviews and Enforcement' "... shall be the exclusive method of redressing unfair labor practices.' The NLRA does not have, a corresponding section." (Order Granting Motion to Defer to Contract Grievance Procedure, p. 7.)

of enmity' by Respondent to employees' exercise of protected rights." (77 LRRM at 1936)[8]

Even the briefest glance at the previous relationship between Respondent and the Union reveals a history so at odds with the notion of a "long and productive collective bargaining relationship" that Respondent's position for deferral here is extremely tenuous at best. As described in more detail in Section VI of this Decision, infra, Respondent, in the eight years since the Union's organizing drive and certification, has been found by the Board to have engaged in numerous unfair labor practices including "discriminatory layoffs, threats of loss of employment, and interrogation of employees concerning union affiliation and sympathies," (3 ALRB No. 14, p. 2 (1977)); denial of access to Union organizers, including having the organizers improperly arrested and physically beaten and carried from the premises (3 ALRB No. 14, pp. 9-10 (1977); interfering with the rights of employees, including reducing hours because of Union activities (5 ALRB Mo. 29 (1978); unilaterally contracting out work without bargaining with the Union (8 ALR3 No. 35, p. 2 (1982); and discriminatorily laying off workers because of their Union support (3 ALRB No. 85, p. 8 (1982). Further,

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[8]The Collyer case was modified by the NLR3 in certain respects in General American Transportation Corporation 223 NLR3 No. 102, and Roy Robinson Chevrolet, 228 NLRB No. 133, 94 LRRM 1474 (1977). However, these cases do not change the basic policy, stated in Collyer that deferral should be made in cases where the deferral is consistent with the overall policy of the NLRA, and where no violations of individual employee rights are alleged.

as Respondent itself points out in its motion to defer, in the two-month period from July to September 1982, there were thirteen separate grievances filed by the Union over the matters at issue here.

Therefore, because (1) the instant case involves allegations of denial of individual employees' rights; (2) the past history of labor relations between Respondent and the Union is fraught with conflict; and (3) General Counsel alleges that Respondent is engaged in a pattern whose direct aim is to undercut the employees' support of the Union, deferral to arbitration would be inappropriate under the deferral policies described above.

There is another, equally important reason why deferral to arbitration is not appropriate in the instant case. As noted in the Summary of Alleged Unfair Labor Practices (Section III of this Decision, supra), the General Counsel is here alleging a whole pattern of anti-Union actions on the part of Respondent. If certain of these allegations are deferred to arbitration, the record in this case would not contain the entire picture. It would then be more difficult to understand whether there is in fact a pattern of anti-Union actions by Respondent. Without the fullest possible record, both the Administrative Law Officer and the Board would be deprived of the totality of the facts in making their respective determinations.

For all the above reasons, I find that it would be inappropriate to defer any of the alleged unfair labor

practices to arbitration. Accordingly, Respondent's Motion to Defer Proceedings to Arbitration Subject to the Collective Bargaining Agreement (GCX:3(lN); RX:8; Post-Hearing Brief for Respondent, p. 71), is hereby denied.

V. OVERVIEW OF OPERATION OF THE FARM; RESPONDENT'S SUPERVISORS

Respondent is a California corporation engaged in agriculture in Kern and Tulare counties. Respondent's primary business consists of growing and harvesting table grapes (RT 11:47-48). Respondent also grows some other crops, including almonds and plum trees (RT II:47-48).

Mr. Dudley Randolph Steele is Respondent's president. Mr. Steele is the son of Mr. Dudley M. Steele.[9] Mr. Dudley Randolph Steele is known by the name Randy Steele, and will be so called herein. As president of Respondent, Randy Steele has authority over all of Respondent's business operations.

Mr. David Caravantes is Respondent's Director of Industrial Relations and bargaining representative. His duty is to oversee all of Respondent's operations, including "Seeing that a crop is planted, harvested, taken care of. Hiring people to see that these tasks are accomplished" (RT 11:43). Mr. Caravantes delegates responsibility for the various farming and business operations of Respondent, and checks to

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[9] In this section I do not discuss whether Mr. Dudley M. Steele is an owner of Respondent or in some other way 2 joint employer with Respondent. Mr. Dudley M. Steele'5 connections to Respondent are discussed in Section XIV of this Decision, infra.

see that these operations are carried out correctly. Mr. Caravantes spends most of his time in his office, but goes out to the fields about a quarter of his time. He is familiar with Respondent's field operations, and knows all of Respondent's foremen by name.

Mr. George Johnston is Respondent's Personnel and Safety Director. Mr. Johnston is involved in such areas as Respondent's medical plan for its employees (RT VIII:19), and he is also concerned with carrying out decisions as to how many crews to hire, and which crews to hire, for given farming operations (RT 11:91). Mr. Caravantes testified that he "usually discuss[as] that" with Mr. Johnston, and Mr. Johnston "usually makes a recommendation. It's never been overruled yet" (RT II:91). Mr. Johnston testified "Randy Steele is my immediate supervisor. I go to David [Caravantes] for anything to do with administering the contract and possible grievances, work very close with David as far as that area goes" (RT XXXIV:31).

In addition to Mr. Randy Steele, Mr. Caravantes, and Mr. Johnston, Respondent stipulated that the following named individuals .were supervisors within the meaning of Section 1140.4 of the Act (following each name is the individual's title):

Roberto Dominguez (Supervisor)

Dennis Thomas (Supervisor)

Luciano Gonzales (Supervisor)

Joe Medina, Jr. (Supervisor)

Bill Pritchett (Supervisor)

Carlos Qunitana (Supervisor)

Mike Gonzales (Supervisor)

Leonardo Bazuldua (Supervisor)

Elias Guiterrez (Supervisor)

Jimmy Bado (Foreman)

Rosie Juarequi (Foreman)

Zack Lumitap (Foreman)

Mary Feliscian (Foreman)

Joe Medina, Sr. (Foreman)

Berta Medina (Foreman)

John Galindo (Foreman)

Lupe Arreola (Foreman)

Candido Lopez (Foreman)

Conrado Sosa (Foreman)

Maria Garcia (Foreman)

Antonio Prieto (Foreman)

David Barrera (Foreman)

Domingo Ruberto (Foreman)

Rodolfo Granada (Foreman)

Eduardo Garcia (Foreman)

Leonardo siador (Foreman)

Bernie Labasan (Foreman)

Eddie Galindo (Foreman)

Lupe Zacarias (Foreman)

Isidro Silva (Foreman)

Guadalupe Bazaldua (Foreman)

Julian Camate (Foreman)

Longino Gonzales (Foreman)

Ruth Silva (Foreman)

Yolanda Peragrina (Foreman)

Efren Gallegos (Foreman)

Rogelio Soliman (Foreman)

G.G. Oliver (Foreman)

Benjamin Gallegos (Foreman)

Constantino Regaspi (Foreman)

Filimon Ortiz (Foreman)

Rogelio Rodriguez (Foreman)

Anuar Gonzalez (Foreman)

Paul Mendoza (Foreman)

Jorge Vidal (Foreman)

Esteban Agpaiza (Foreman)

Bernardo Colantas (Foreman)

Transly Menor (Foreman)

Constantino Galindo (Foreman)

Henry Toribio (Foreman)

Valentin Arreliano (Foreman)[10]

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[10]Respondent stipulated that the lists of crew bosses (foremen) for 1981 and 1982, as found in General Counsel's Exhibits 13 and 14, were supervisors within the meaning of the Act (RT V:110). Those lists show the following individuals and their crew numbers:

1981 Crew Bosses (GCX:13): Rosie Jauregui (#51); Jimmy Bade (#54); Mary Feliscian (#56); Zack Lumitap (#57); Jose .Medina (#53); John V. Galindo (#52); Lupe Arreola (#53); Otilia Herrera (#61); Candido Lopez (#59); Elias Gutiarrez (#64); Leonardo Siador (#45); Jorge Vidal

The status of other individuals including alleged labor contractors Lemuel Lefler, Frank Herrera, Edwin Galapon, George Borroga, Gilbert Renteria and Romulo Media Longboy, is discussed in the relevant sections of this Decision infra.

VI. UNION ACTIVITIES AT RESPONDENT'S BUSINESS

A. Certification of the Union, and Respondent's Prior ALRB Litigation.

Respondent's history of litigation concerning unfair labor practices under the Act began with a decision by the Board on February 15, 1977 (3 ALRB No. 14). In that case the Board found that during the Union's organizing campaign in 1975 Respondent had committed a number of unfair labor practices. The Board held that Respondent had unlawfully denied access to Union organizers in violation of the Act,

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47); Emegidio (Eddie) Galindo (#48); Efrem Gallegos (#49); Reynaldo (Bernie) Labasan (#53); Guadalupe Zacarias (#46); Esteban Agpaiza (#44); Bernardo Calantas (#43); Transly Menor (£42); Constantin Galindo (#41); Henry Toribio (#40); and Valentin Arrellano (#39).

1982 Crew Bosses (GCX:14): Jimmy Bado ($54); Rosie Jaurequi ($51); Zack Lumitap (#57); Mary Feliscian (#56); Joe Medina Sr. (#55); Berta Medina (#55); John Galindo (#52); Lupe Arreola (#53); Candido Lopez (#59); Conrado Sosa (#54)7 Maria Garcia (#33); Antonio Prieto (#37); David Barrera (#36); Domingo Ruberte (#35); Rodolfo Granada (#34); Edwardo Garcia (#33); Leonard Siador (#45); Bernie Labasan (#47); Eddie Galindo (#48); Lupe Zacarios (#46); Tanti [Constantino] Galindo (#41);Isidro Silva (#32); Guadalupe Bazaldua (#31).; Julian Camate (#30); Juvenal Montemayor (#29); Longino Gonzalez (#28); Ruth Silva (#25); Yolanda Peragrina (#24); Efrem Gallegos (#23); Rogelio Soliman (#22); G.G. Oliver (#21); Benjamin Gallegos (#20); Constantino Regaspi (#19); Filimon Ortiz (#13); Rogelio Rodriguez (#17); Anuar Gonzalez (#15); and Paul Mendoza (#15).

and that the manner in which Respondent did so also violated the Act by intimidating workers:

"The record showed that on [September 30, 1975], five organizers were arrested for trespassing on the Respondent's property, and that one of the organizers, Vasquez, was lifted bodily by one of the Respondent's supervisors, carried some distance and deposited on the roadway skirting the field. This activity occurred in the presence of a substantial number of workers.

...

[On October 3, 1975] Randy Steele ... physically moved organizer Green several hundred feet to the vehicle in which he and his companion had arrived. The evidence is that Green attempted to resist this handling, but to no avail. Green testified that in the course of these events he was scratched and bloodied and his shirts were torn, he was thrown down several times, grabbed around the neck, and had his arms twisted by Randy Steele.... There is no substantial dispute that Green was forcibly restrained in the back of his pick-up truck by Randy Steele, a man 3-9 inches taller and one hundred pounds heavier than he. The record contains no evidence of an imminent need to secure persons against the danger of physical harm or to prevent material harm to tangible property interests.

...

"On September 30, the record reflects that a super-

visor 'bear-hugged' and physically carried an organizer from Respondent's property and deposited him on a public roadway. This activity occurred in the view of the workers. On October 1, the evidence is that an organizer, again in the presence of the workers, was pushed and kicked several times and forced from the property by a supervisor. On October 2, two organizers were prevented from leaving in their vehicle, one was pushed, a punch was directed at the other, all in view of workers. On October 3, as Respondent's witness testified, one organizer was physically carried, despite his struggles, at least several hundred feet and physically restrained in the bed of a pick-up truck and another was led by the arm the same distance. They were forced off the property. Again, these incidents occurred in the presence of workers.... "

(3 ALRB No. 14, pp. 6, 9-10, 12-13. Footnotes omitted.) The Board concluded that

"The bitterness and chaos which historically has characterized the situation in agricultural labor will never be alleviated if physical confrontation of this sort is allowed to occur without sanction." (3 ALRB No. 14, p. 10)

In the same case the Board upheld the Administrative Law Officer's findings that Respondent violated the rights of its employees by engaging in "discriminatory layoffs, threats of loss of employment, and interrogation of employees concerning union affiliation and sympathies...." (3 ALRB No. 14, p. 2)

On June 1, 1977, the Onion was certified as the exclusive collective bargaining representative of Respondent's agricultural employees.[11]

On April 24, 1979 the Board decided a second unfair labor practices case involving Respondent (5 ALRB No. 29), concerning events which occurred in September 1977, three months after the Union was certified and while negotiations for a contract were taking place. The Board affirmed the Administrative Law Officer's findings that Respondent reduced the hours of work for an employee because of that employee's Union activities as a negotiator:

> "Mr. Rivera continued working ten hours per day after his reassignment .... until September 16 [1977], the day after a negotiating session between Tex-Cal and the UFW [which Mr. Rivera attended as a Union negotiator], On that day, in the middle of the workweek, Mr. Rivera's maximum hours were cut to 8, at which level they remained through the time of the hearing. No other member of Mr. Rivera's crew was reduced in maximum hours from 10.... No substantial reason was advanced as to why only Mr. Rivera at the Poso Ranch was cut to 8 hours per day....
>
> "[N]o substantial business justification existed and ... the reduction, perpetrated upon a union negotiator, was inherently destructive of important employee rights." (5 ALRB No. 29, Decision of ALO, pp. 20-21, 31).

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[11]The certification took place after the Board's Partial Decision on Challenged Ballots, 3 ALRB No. 11 (February 12, 1977). The election took place on October 8, 1975.

On May 11, 1978 Respondent and the Union signed a collective bargaining agreement. That agreement remained in effect until November 2, 1979. On that data a second agreement was signed, which remained in affect until July 31, 1980.

On November 24, 1982, the Board decided a third case involving Respondent, in which it held that Respondent had committed a number of unfair labor practices in 1979 and 1980 during the term of the two contracts with the Union (8 ALRB No. 85). The Board found that on four separate occasions Respondent unlawfully subcontracted out bargaining unit work:

> "In each of the four instances the Union was given neither notice nor an opportunity to request bargaining to make such changes [subcontracting bargaining unit work to another agricultural employer] or about the effects of such changes on the unit employees' terms and conditions of employment." (8 ALRB No. 85, p. 8)

In the same case, the Board also found that in 1983 Respondent unlawfully discharged the entire harvest Crew No. 64 "because of their concerted protests concerning working conditions" (8 ALRB No. 85, p. 8).

Also in the same case, the Administrative Law Officer found that in 1980 Respondent unlawfully suspended seven employees because of their union activities, discharged one employee because he filed a grievance against Respondent, and

laid off three employees because they had engaged in protected concerted activity (8 ALRB No. 85, Decision of ALO). Respondent and the Union agreed to a settlement concerning these employees.

After the expiration of the second collective bargaining agreement on July 31, 1980, the parties reached apparent agreement on a third contract, but on August 1, 1980 Respondent refused to sign that agreement. Respondent's refusal to sign that agreement was the subject of a fourth case before the Board, which is still pending.[12]

B. Union Activities Since August 1980.

As noted above, the second collective bargaining agreement expired on July 31, 1980, and although agreement had apparently been reached on a new contract, Respondent refused to sign that contract in August 1980. The instant case concerns alleged actions by Respondent since its refusal to sign that contract.

From August 1980 through October 1981, there was considerable Union activity among Respondent's workers aimed at getting Respondent to sign a new contract.

During the period from August 1980 through June 1981, the testimony shows that in virtually all of Respondent's regular crews there was open Union activity by the workers, done in

[12]On May 15, 1981 the Board held that Respondent's refusal to sign the previously agreed-to and initialed agreement was a per se violation of Section 1153(a) and (e) of the Act. Tex-Cal Land Management, Inc. 7 ALRB No. 11. The Court of Appeals reversed and remanded the case to the Board for a determination whether the refusal to sign was actual bad faith. (See Tex-Cal Land Management, Inc. 8 ALRB No. 85, p. 5, n. 4).

the presence of the craw, foramen.[13] Workers wore Union buttons saying "We want a contract" ("Queremos contracto"), discussions were had about the desire for a contract and for higher wages, and leaflets were passed out. These activities took place in the fields before work, during breaks, and during lunch, often in the presence of craw foremen. There was testimony to these activities in at least seven of the ten craws regularly working during that time. (RT V:96-101; VI:47-43; 141-145; XII:6-9; XIII:56-57; XV:16-17).[14]

In April 1981 negotiations began again between the Union and Respondent. Ms. Deborah Miller was the main negotiator for the Union, and attorney Sid Chapin was the main negotiator for Respondent. Mr. Randy Steele was also present for Respondent, and later in the negotiations Mr. Caravantes and Mr. Johnston attended (RT XXV:12). Ms. Miller testified that she felt that after a few months no progress was being made. In June 1981 she organized a' picket line at Respondent's offices, and in August 1981 she organized a work stoppage and picket line at Respondent's offices. She testified that "[T]he message they [the workers] were giving at those demonstrations was that they wanted a contract and that they wanted the company to bargain and get a contract" (RT XXV: IS) .

[13]It was stipulated that the crew foremen were supervisors within the meaning of the Act. See note 10, supra.

[14]These activities took place in Crews 52, 54, 55, 56, 57, 59, and 64. General Counsel's Exhibit 41 is a copy of the leaflets distributed to the crews by the Union stewards in the crews.

The first picket line took place on June 22, 1981 at Respondent's offices. The picket line took place after work. During work earlier that day there was discussion in the crew about the picket line, which took place in front of the foremen. Union stewards told the workers that "we were going to form a picket line at the company because we wanted a contract" (RT VI:49). After work the workers assembled in front of Respondent's offices. Approximately 100-150 workers attended, carrying flags and banners stating that they wanted a contract and higher wages. Mr. Randy Steele and Mr. Johnston were at Respondent's offices at the time, and were seen outside the offices at various times by the workers. The picket line activities lasted for a couple of hours (RT V:103-104; VI:50-51; XII:11-13; XIII:59; XVI:15-16).

While the workers were assembled in front of the Respondent's offices, there was undisputed testimony that. Mr. Dudley M. Steele (called by the workers "Buddy" Steele) was present, and was photographing the workers on the picket line. Mr. Dudley M. Steele was seen at times with Mr. Johnston. He spent approximately half an hour photographing the workers (RT V:105-108; VI:50-51; XII:12-14; XVI:15). As I have noted supra, Mr. Dudley M. Steele[1]s status as a possible joint employer with Respondent is discussed in Section XIV of this Decision, infra, and I make no finding here concerning whether Mr. D.M. Steele's actions in photographing the workers was done as a supervisor or agent of Respondent. I do not

rely on this photographing incident in making my findings concerning Respondent.

The second picket Line took place on August 3, 1981 at Respondent's offices. During that morning, there was discussion among the workers in the crews about the upcoming picket line, often in the presence of foremen (RT V:108; VI: 52, 146; XIII: 64-67). Ms. Aurelia Alvarez, a worker in Crew 59, testified that "When [crew foreman Candido Lopez] became aware that we were going to leave at noon, he told us that we were going to be fired" (RT V:108). Mr. Lopez was called to testify by Respondent, but was not asked about this incident. During that same morning, Mr. Johnston told two workers in Crew 64, Ms. Lydia Rodriguez and Ms. Rosa Casades, that they shouldn't go on the picket line, and that the company was willing to pay $4.60 wages: "He said 'I'll pay four -- sixty. Don't go to the picket line'" (RT XIII:67). "[George Johnston] said, 'Rosa, don't leave. We are offering you 460.... ' " (RT XXII:50).

The workers in all ten regular crews stopped work and left at noon, several hours before the day's work was scheduled to end. They assembled on a picket line in front of Respondent's offices. The majority of workers from all the regular crews atended: Crews 51, 52, 54, 55, 56, 57, 58, 59, 61, and 64. A total of approximately 400 workers were on the picket line. They wore Union buttons and carried Union flags and signs which "said we wanted S4.S3 and we wanted a contract and more, that they would raise our wages, and for

them not to lie to us" (RT V:110). Police were present in the area, patrolling along the blocks. Mr. Randy Steele, Mr. Caravantes and' Mr. Johnston were present. The picketing lasted approximately four hours (RT V:108-114; 71:52-54, 146-151; XII:17-21; XIII:67-68; XV:20). General Counsel's Exhibit 38 is a picture of the August 3, 1981 picketing.

During the August 3rd picketing, Mr. Doug McDonald, whom Respondent stipulated was at the time a supervisor within the meaning of the Act (RT 71:55), went to a woman in the picket line who was carrying a Union flag and took the flag away from her, hit her, broke the flag, and threw the flag to the ground (RT 71:55-56).

Following the picket lines of June 22nd and August 3rd, a worker in Crew 59, Ms. Matilda Lopez, testified that her foreman's attitude changed towards the workers in the crew:

"A. Well, he would pressure us more.

Q. And can you describe that, what you mean by that?

A. Well, he wouldn't like the work the way we were doing it. He'd give us more work. He'd push us. If we did the deleafing, he didn't like it. Everything that we did, he did not like."

(RT XVI : 17)

Following the picket lines of June 22nd and August 3rd, bargaining continued and an agreement was finally reached on a new contract in September 1981. On October 4, 1981 the new contract was signed by Respondent and the Union. It's effective dates ran from June 11, 1981 through June 6, 1982 (GCX:-52).

In April 1982 bargaining began on a contract to follow the expiration of the contract due to expire on June 6, 1982. Agreement was not reached. The details of this bargaining are discussed in Section XII of this Decision, infra.

VII. HIRING ADDITIONAL CREWS DURING 1981 HARVEST

A. Findings of Fact.

The General Counsel alleges that during the 1981 harvest, Respondent hired a large number of additional crews, without bargaining with the Union, for the purpose of reducing work for regular Union crews.

During the 1980 harvest, and in the early summer 1981 pre-harvest, Respondent had ten regular crews working: Crews 51, 52, 54, 55, 56, 57, 58, 59, 61, and 64. As described in Section VI of this Decision, supra, these crews participated openly in Union activities, including wearing Union buttons, distributing and discussing Union literaure, and participating in the two picket lines in June and August, 1981. These activities were known to Respondent. The General Counsel alleges that following these picket line activities, Respondent hired additional harvest crews in 1981 for the purpose of reducing the work opportunities for the regular crews because of their Union activities.

There is no essential dispute concerning the facts, though there is a dispute as to Respondent's reasons for its actions in the 1981 harvest. An examination of the employment records for the 198Ø harvest, (GCX:11), shows that in 198Ø Respondent used the tan regular crews, and only those crews,

for its pre-harvest and harvest work. The records show that from July 9, 1980 through November 19, 1980 Respondent had all the ten regular crews working every day each week, except Sundays. In that entire time there were only five days (other than Sundays) when the crews did not work, and three of those days were Saturdays.[15] Respondent did not employ any additional harvest crews during the 1980 harvest.

The pattern for the 1981 harvest is quite different. The records (GCX:10) show that beginning on July 24, 1981, Respondent began hiring additional crews. Harvest crews, generally contained 40 members (RT II:104); thus Respondent hired several hundred additional workers for the 1981 harvest.

There is no doubt that by employing as many as 20 crews a day in 1981 the overall work opportunities for the 10 regular crews were substantially reduced over the length of the harvest. As noted, in the 1980 harvest there were only five days (other than Sundays) on which the crews did not work. In comparison, in 1981, during the period from July 24th (when Respondent began employing additional crews) to November 10th several of the regular crews did not work on as

[15]The crews did not work on September 1 and 20, and October 10 , 11, and 18. Crew 64 was laid off in September 1980 and did not work for the rest of the harvest, but the Board found that the layoff of Crew 64 was in retaliation for its union activities. Tel-Cal Land Management, Inc., 8 ALRB No. 85.

many as 32 days (other than Sundays).[16] In addition, there was a one-week period when all the crews were on layoff (September 17-23), and another four-day layoff period (October 28-31). Some of the regular crews were on layoff for as long as two weeks. There were no comparable layoffs during the 1980 harvest.

In addition to the substantial reduction in days worked for the regular crews, a number of employees testified that after the picket lines the regular crews were often sent home early from work. Mr. Jorge Orosco testified that in 1981 work in his crew (Crew 57) would sometimes be stopped at noon, contrary to the usual 8 hours the crew worked in 1983 (RT VI:65). Mr. Alejandro Lopez (Crew 54) testified that "We began working less hours" (RT XV:21). Ms. Matilda Lopez (Crew 59) testified:

"Q. Did you notice any change in the hours that you worked after the first picket line?

A. [Affirmative nod.] They gave us less work hours.

Q. How was that?

A. Well, they would tell us that the grapes had no sugar and they would send us home.

Q. Who would tell you that the grapes didn't have any sugar?

A. The foreman.

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[16]Crews 59 and 61 missed 32 days of work: August 22, 24, 25, 26, 27, 28, 29, 31, September 1, 2, 3, 4, 7, 18, 19, 21, 22, 23, 24, 25, 25, October 13, 12, 13, 14, 15, 16, 17, 28, 29, 30, and 31. Craws 58 and 64 missed almost as many

Q. Candido Lopez?

A. Yes.

Q. Did the inspector ever tell you -- did you ever hear an inspector say that the sugar wasn't in the grapes?

A. No.

(RT XVI:17)

Mr. Candido Lopez, foreman of Crew 59, was called to testify by Respondent, but was not asked about the reason for sending home workers early.

Mr. Pedro Ramirez (Crew 55} testified that after the picket lines his crew sometimes "worked half-days and not complete hours" (RT XII:27). He testified that his crew foreman, Mr. Jose Medino, Sr. said the reason he was sending the crew home early was "Because he said they had the packing shed filled up" (RT XII:27). Respondent called Mr. Medina Sr., but did not ask him about sending home workers early.

Respondent offered two justifications for hiring the additional harvest crews in 1981. Mr. Joe Medina, Jr., a supervisor for Respondent in 1980 and 1981, testified that his job was to supervise the harvesting crews and to determine when the grapes would be ready for harvesting (RT XXIII: 1Ø-11). Mr. Medina testified that the two reasons for needing extra harvest crews in 1981 were (1) there were more acres of Thompson's seedless grapes; and (2) there was hot weather which caused the grapes to ripen all at once (RT XXIII:78-83; XLIII:38-39).

Concerning the increased acreage of Thompson's seedless grapes, Mr. Medina testified: "[W]a had more acreage...." (RT XLIII:38); "I think we have more now than in 198Ø" (RT XXIII: 82).

Respondent's main contention was that a heat wave ripened the grapes all at once, forcing the hiring of extra crews. Mr. Medina testified: "The weather came all at once and we needed extra crews...." (RT XLIII:38). "You know, when you have that warm weather and these grapes come all at once you just got to get them off the vine, you know" (RT XLIII:4Ø). Mr. George Johnston testified that the hot weather caused the grapes to mature all at once, requiring extra crews (RT XXIV: 87; XLIV:49). He testified that he first found out about the problem "Sometime between [July] 13th and the 25th" (RT XLIV: 49). He specified that it was probably "after [July] 18th that we saw things coming up, things ripening all at once" (RT XLIV:51). He stated that he got this information from Joe Medina, Jr. and from Randy Steele (RT XLIV:51).

Respondent also introduced weather summaries, showing that the weather in Bakersfield, California was hotter in June, July, and August 1981 than in the comparable months of 1980 (RX:40).

There are, however, some problems with Respondent's explanations for the great increase in the number of crews in the 1981 harvest. First, Mr. Medina was originally called as an adverse witness by General Counsel, and in specific testimony regarding the cause of the extra crews he never referred to the grapes suddenly ripening at once because of the heat. Rather, he stated that the sole reason was due to increased acreage of Thompson's grapes; only later in the hearing, when called by Respondent, did Mr. Medina add the weather as a factor. Mr. Medina's original testimony was:

"Q. That was the only reason that you needed more crews, because you had basically more Thompson's Seedless grapes to pick than you had in the 1980 harvest, right?

A. Well, the sugar was good last year, so they came along pretty good, and we were able to get them, so we got them.

Q. Wait a minute. Let me get this clear. Isn't the reason why you employed additional crews in the harvest last year when you began harvesting in the Delano area, the reason you did that was because you had more acreage of Thompson's Seedless grapes?

A. Yes, that's correct.

Q. That's the only reason, right?

A. Well, yeah, we needed them.

Q. The reason was because you needed more crews to pick those additional Thompson's Seedless grapes, right?

A. Right.

Q. And that's the only reason, correct?

A. Right. (RT XXIII:83)

There is an even greater difficulty in Respondent's evidence, in that, despite Respondent's insistence that there was an emergency requiring the grapes to be picked all at once, the employment records reveal that in a number of instances the crews were not harvesting the grapes. Mr. Johnston testified that sometime between July 18th and July 25th he found out from Mr. Medina that there was an emergency

requiring more crews to harvest the grapes, and the records show that the first additional crews were brought in on July 24th (RT XLIV:51). However, General Counsel's Exhibit 1Ø shows that on July 20, 21, 22, and 23, a number of the regular crews were still doing preharvest work on both Thompsons and other varieties of grapes.[17] Further, on July 24th, the day the first two additional crews were hired, both those crews did preharvest work, as did two of the regular crews. (Crews 51 and 58) (GCX:13). On July 25th, when a third additional crew was hired, all three of those crews did ore-harvest work, as did regular Crew 58. This pattern continued in varying degrees throughout the week. When Mr. Medina was asked about these facts, he was able to provide no explanation at all:

> Q. Well, when you had Crew 50 [a new crew] on the 28th of July and you put them in the Thompsons on Ranch 85, why didn't you have them pick rather than have them do the pre-harvest work?
>
> A. Why didn't I have them pick?
>
> Q. Yes. Why didn't you have them pick rather than do the pre-harvest work for two days?
>
> A. I don't remember.
>
> Q. You don't remember?
>
> A. No.

[17]On July 20, pre-harvest work was done by Craws 56, 55, 52, 61, 59, and 64. On July 21, pre-harvest work was done by Craws 61 and 59. On July 22, pre-harvest work was done by Crews 51 and 57. On July 23, pre-harvest work was done by Crews 51 and 58 (GCX:1Ø).

Q. It doesn't sound like the same emergency you've been talking about, right?

A. Well, like I said, when them grapes came, they came. We used the crews we needed to get them off."

(RT XLV:77)

Respondent had an even more difficult time explaining the long layoff of several of the regular crews during the last week of August and first week of September. At Respondent's farm, there are two broad classes of grapes: early grapes and late grapes. The early grapes are usually harvested in July and August (Thompson's and other varieties), and the late grapes are usually harvested in September and October (Calmarias, Emperors, and other varieties). As the employment records show (GCX:11), in 1983 Respondent was able to arrange this work in an orderly fashion which kept the ten regular crews working without any layoffs from the early harvest, to the pre-harvest of the late grapes, to the late harvest. In 1981, when the early harvest was finished at the last week of August, several of the regular crews were laid off for two weeks.

General Counsel asked Mr. Medina what the usual time for pre-harvest work on the. late grapes was, and Mr. Medina replied two or three weeks (RT XLV:30). This was the case in 1980 (GCX:11). In 1981, however, when the early harvest finished, all the additional crews and four of the regular crews were laid off for two weeks. Then on September 8th, Respondent brought back all 20 craws and did all the pre-harvesting

work on the late grapes in eight days (GCX:1Ø). When General Counsel pressed Mr. Medina and Mr. Johnston for an explanation of why the ten regular crews couldn't have done that work over the two-week period during which several of them were laid off, Respondent could not offer an explanation. Mr. Medina simply denied that doubling the workforce resulted in a shortening of the harvest (RT XLV:82). Mr. Johnston testified as follows:

> "Q. Why did you call back all 20 crews to do that pre-harvest work on the Calmarias and the Emperors?
>
> A. Well, we were a little behind in the work and thought we'd need some of the crews to work in the late grapes.
>
> Q. If you were behind, why didn't you just call your regular crews, 58, 61, and 59? They had been on layoff for two weeks. Why didn't you have them doing pre-harvest work?
>
> A. I don't know." (RT XLIV:83)

An examination of the manner in which the additional crews were hired raises further questions concerning Respondent's use of these crews in the 1981 harvest. Ms. Miller, the Union negotiator, testified that she found out on July 23rd that Respondent had placed an order with the state employment development department in Delano for thirty workers. She called Mr. Caravantes and he stated to her that the order was a mistake. "[H]e indicated that they [Respondent] were

going to do some hiring, possibly that next Tuesday, I believe, but that they would let us know about any hiring that took place and that they would deal with us on hiring, that they weren't going to do it without us knowing about it" (RT XXV:20). Mr. Caravantes did not indicate to her that Respondent would do any hiring before July 28th (RT XXV:21). General Counsel's Exhibit 10 shows that on July 24th Respondent hired two additional crews, and added a third on July 25th. Oh July 24th, Ms. Miller had another conversation with Mr. Caravantes. She testified that he told her Respondent would be hiring crews as of July 28th, and Ms. Miller responded "[W]hat I indicated to him was that if they were due, we should go by the contract, that we would want notice per the contract language, the old contract language that hadn't, been signed regarding any hiring, and that if they felt they couldn't get enough people and they had to use labor contractors that we wanted to negotiate any subcontracting or use of labor contractors that occurred" (RT XXV:24). Ms. Miller further testified that Mr. Caravantes "was agreeable to that. He indicated he would do it" (RT XXV:24). Ms. Miller further testified that the unsigned contract to which she referred had the same notice of hiring provision (Respondent should give the Union two days' notice in writing) that was contained in the previously signed contract. She further testified that this was a standard provision in the Union's contracts and was the same as the provision in the subsequent 1981-82 collective bargaining agreement (RT XXV:24-25). That

agreement (GCX:52) contains a notice provision which reads: "The Company shall give two (2) days advance written notice to the Union of its intention to accept applications, which notice shall state the estimated dates and periods during which the Company will take applications, the office hours when applicants may report to the Company to make out application forms and the Company's estimated needs for new hires" (GCX:52, Article 3, Section 3).

Ms. Miller testified that she did send approximately sixty people to Respondent on July 28th (RT XXV:30-31). Some of those people were hired, and on August 5th she called Mr. Caravantes again to ask about the remainder of that group, who had not been hired. Mr. Caravantes told her that he was intending to hire another crew the next day. Ms. Miller testified that she expressed surprise that she had not been given the notice promised, and Mr. Caravantes responded "Well, I just found out twenty minutes ago myself" (RT XXV: 31). Ms. Miller sent out the individuals to Respondent's premises and they were hired.

Ms. Miller testified that she was not given any further notice of hiring, but that in August she began hearing about further crews being hired. In mid-August she went to Respondent's premises and was surprised to find a large number of new crews, ten in all. She testified she was also concerned because some of the new crews had been provided by labor contractors who had been the subject of unfair labor practices involving Respondent before, or who had brought in

crews during strikes at other places: "[T]he only notice I had gotten was for that Tuesday [July 28th] and then that other one [August 5th] where I kind of caught [David Caravantes] by surprise the day before, so, yeah, I was very concerned that people were being put in without us having any opportunity of notice, and that the people who were showing up were people who were people who were with labor contractors who had broken strikes in other places, pie that I felt would certainly have allegiance to those labor contractors, rather than people that we would have had the opportunity to send" (RT XXV:35).

Ms. Miller identified several specific crew foremen she saw on the premises as having worked before for labor contractors whom she knew to have been involved in previous ALRB litigation between the Union and Respondent, or whom she knew had been involved with crews that were brought in to work during strikes at other employers: Bernard Calantes,[18] Henry Toribio (who told Ms. Miller he worked for Romulo Longboy)[19], and Jorge Vidal (who told her he worked for Gilbert Renteria)[20]

Mr. Caravantes testified that he posted a notice about

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[18]Ms. Miller testified that Mr. Calantes had brought in a crew to work during a strike at Mount Arbor in 1977 (RT XXV:33).

[19]Ms. Miller testified that Mr. Longboy had brought in crews during a vegetable strike in Oxnard and Huron.

[20]Respondent's use of workers from Mr. Renteria was the subject of a previous unfair labor practices case, Tex-Cal Land Management, Inc., 8 ALRB No. 85.

the hiring of the additional 1981 crews at various places in the vicinity (RT 11:107), and that he notified the Union (RT 11:108). Later, however, he testified that:

> "Q. On the hiring, other than posting and talking to the individual employees. It's the only way that you attempted to obtain workers for those additional crews that you hired?
>
> A. No. I don't---- I believe Mr. Johnston notified the union, also. And I believe he did receive people from them."
>
> (RT II:120)

It appears that Mr. Caravantes' memory about notifying the Union was not precise, and in its Post-Hearing Brief (p.20) Respondent concedes that some craws were hired without notice: "Although it may be true that some crews were hired, with little or no notice to the union, this could hardly be held to be significant when viewed in the total picture."

In view of all the above testimony, much of which is uncontradicted, and in light of the employment records (GCX:10, 11), I make the following findings of fact concerning the hiring of additional crews during the 1981 harvest:

During the 1980 harvest ten regular crews worked the entire harvest: Crews 51, 52, 54, 55, 56, 57, 58, 59, 61, and 64. These crews worked the full harvest period without any layoffs (except for five separate days during the three-month period). No additional crews were hired by Respondent during that harvest.

2. On June 22, 1981 and August 3, 1981 the workers in these ten regular crews participated in picket lines and a work stoppage, in order to protest the lack of a contract. These activities were known to Respondent.

3. Beginning on July 24, 1981 Respondent employed a total of 12 additional crews for the 1981 harvest. These crews worked during much of the 1981 harvest.

4. Respondent notified the Union in connection with the hiring of one crew on July 28, 1981, and one crew on August 6, 1981. The Union was not notified about the hiring of the other 13 additional crews.

5. The use of the 12 additional crews resulted in a shortening of the harvest work for the 10 regular crews in the 1981 harvest. Some of these regular crews missed as many as 32 days of work during the harvest period. Some of the regular crews were laid off for most of a two-week period from August 22 through September 7, 1981, between the completion of the harvest of the early grapes and the start of the harvest of the late grapes.

6. Respondent has not provided a credible explanation as to why additional crews were needed in such number as to substantially reduce the work for the regular crews.

(a) In this regard, I credit Respondent's evidence that there was hotter weather in 1981. Further, I find that the hotter weather, plus an additional amount of Thompson's seedless grapes, may have required the employment of some extra crews. However, I do not find that conditions

required the use of so many extra crews, employed on so many days, that work for the regular crews needed to be shortened. Respondent's explanation on this point is greatly undercut by the undisputed fact that many of these extra crews did ordinary pre-harvest work, at a time when Respondent claimed an emergency existed which required grapes to be picked immediately. When asked to explain this important contradiction, Respondent's witnesses replied that they did not know why this occurred.

(b) Respondent offered no credible explanation why it laid off several regular crews from August 22 through September 7th, then rehired them along with tan additional crews to do all the pre-harvest work on the late grapes in one week. Respondent's sole explanation was- testimony by Mr. Medina that the late grapes weren't ready for pre-harvest (RT XLV:32). However, I do not credit Mr. Medina's testimony on this point because: (1) his testimony on these matters, as explained above, shifted at different times during the hearing; (2) he offered no supporting evidence or reasons why the grapes had not reached the ready stage in 1981 as they were the previous year; (3) he offered no explanation why the regular crews could not have returned, after they were laid off, to do the full pre-harvest work once the grapes were ready without the addition of 10 extra crews; and (4) he simply asserted that doubling the number of crews doing this work did not shorten the time it would take.

In sum, I find on this point that while conditions justi-

fied the use of some additional crews in 1981, Respondent's use of those crews was excessive for its asserted needs, and resulted in a reduction of the work hours for its regular crews.

7. Following the two picket lines, Respondent sent home workers in the regular crews early on a number of days. Respondent offered no credible explanation for this action.

(a) In this regard, I do not credit Respondent's explanations beause they are inconsistent. One foreman told his crew the reason was low sugar. Another said the reason was the packing shed was too full of grapes. As to the first reason, Respondent did not offer any testimony from inspectors concerning the sugar content. Also, this explanation is inconsistent with Respondent's claim that the hot weather ripened the grapes so fast that additional crews were needed. The explanation was that the packing shed was full may possibly have been true, but that would simply have been another result of the excessive employment of additional crews. In any event, although Respondent called the foreman who gave that explanation to his crew, it did not ask him about that subject.

B. Conclusions of Law.

1. Lack of Notice To and Bargaining With the Union (Section 1153 (a) and (e).

The second collective bargaining agreement between Respondent and the Union contained a provision requiring that

Respondent notify the Union when it intended to hire employees. This agreement expired on July 31, 1980. I have found that in July and August 1981, Respondent hired a number of additional crews, without notice to the Union. This took place at a time after the expiration of the old contract and before the new contrat was signed. However, it is clear from the Board's recent decision in Tex-Cal Land Management, Inc.,8 ALRB No. 85, that Respondent's action in not following the terms of the expired agreement constituted a unilateral change in working conditions.

In Tex-Cal, the Board held squarely:

> "Where a term or condition of employment is established by past practice and/or contractual provision, a unilateral change constitutes 'a renunciation of the most basic of collective bargaining principles, the acceptance and implementation of the bargain reached during negotiations.' Even after expiration of the contract, an employer's unilateral change of any existing working conditions without notifying and bargaining with the certified bargaining representative constitutes a per se violation of section 1153 (e) and (a) of the Act. Where the unilateral change relates to a mandatory subject of bargaining, such as subcontracting and hiring, a prima facie violation of section 1153 (e) and (a) is established." (8 ALRS No. 85, pp. 5-5. Citations omitted.)

Thus, by changing its harvest hiring practices in 1981 and not following the notice of hiring provision to the Union which had been established in the previous contracts, Respondent violated Section 1153 (e) and (a) of the Act, and I so find and conclude.

2. Reduction of Work for the Regular Crews (Section 1153(a) and (c).

The Board has recently adopted the standards sat out by the NLRB in Wright Line, Inc. (1980 251 NLRB No. 150, 105 LRRM 1169, for determining when a violation of Section 1153 (c) of the Act has occurred. In Nishi Greenhouse, 7 ALRB No. 18, the Board held, in following Wright Line;

> "[I] If the General Counsel establishes that protected activity was a motivating factor in the employer's decision, the burden then shifts to the employer to prove that it would have reached the same decision absent the protected activity." (7 ALRB No. 18, p. 3)

In Giumarra Vineyards, 8 ALRB No. 79, the Board reaffirmed that it would follow the Wright Line standard, as recently interpreted by the 9th Circuit Court of Appeals:

> "[W]e have adopted the interpretation [of Wright Line] of the NLRB as expressed in Zurn Industries Inc. v. NLRB (9th Cir. 1982) 680 F. 2d 683."
>
> (8 ALRB No. 79, p. 1, n. 1)

In Zurn, the Court of Appeals approved the interpretation

of Wright Line that once the General Counsel proves a prima facie case, the burden of proof shifts to the employer:

> "Once the General Counsel has made this prima facie case, the burden shifts to the employer to prove, as an 'affirmative defense,' that the decision would have been the same in the absence of the protected activity....
>
> '[T]he aggrieved employee is afforded protection since he or she is only required initially to show that protected activities played a role in the employer's decision. Also, the employer is provided with a formal framework within which to establish its asserted legitimate justification. In this context, it is the employer which has "to make the proof." Under this analysis, should the employer be able to demonstrate that the discipline or other action would have occurred absent protected activities, the employee cannot justly complain if the employer's action is upheld. Similarly, if the employer cannot make the necessary showing, it should not be heard to object to the employee's being made whole because its action will have been found to have been motivated by an unlawful consideration in a manner consistent with congressional intent, Supreme Court precedent, and established Board processes.'"

(680 E, 2d at 637, 693. Citations ommitted.)

Section 1153(c) of the Act provides that it is an unfair labor practice for an employer, "By discrimination in regard to the hiring or tenure of employment, or any term or condi-

ion of employment, to encourage or discourage membership in any labor organization." Under the Wright Line legal tests set forth in Nishi Greenhouse and Giumarra Vineyards (Zurn Industries v NLRB) above, it is clear that Respondent's actions in the 1981 harvest were a violation of Section 1153(c) of the Act.

The General Counsel has met its initial burden of showing that protected activities were a motivating factor in the layoff and reduction of hours for the regular crews in the 1981 harvest. On June 22, 1981, just as that harvest was about to begin, the employees in those crews participated in Union activities, including a picket line, known to Respondent. Again in August 3, 1981, the employees engaged in Union activities, including a work stoppage and picket line, known to Respondent. Respondent's anti-union animus towards its employees is shown not just from the almost unbroken history of violations of the Act found in previous litigation, but also from the actions of its supervisors in breaking a Union flag, telling employees they would be fired, and becoming hostile and critical of work standards, all done during or immediately after the picket lines of June 22nd and August 3rd. Then, following the Union actions by its employees, Respondent in the 1981 harvest dramatically changed its employment pattern compared to the 1980 harvest. It hired a great number of additional crews which had the direct result of substantially reducing the work for its regular crews in the 1931 harvest. These facts taken together meet

the General Counsel's burden of showing a prima facie case that the Union activities were a motivating factor in the changed hiring practices in the 1981 harvest.

Under Nishi Greenhouse and Giumarra (Zurn Industries v NLRB), supra, the burden shifts to Respondent to show that the hours of work for its regular employees would have been reduced anyway. Here, Respondent's explanations fall far short, and I find they are pretextual. Respondent's explanation for hiring the additional crews was that the grapes were all ripening at once, there were more grapes to harvest, and the additional crews were needed to harvest them. However, as discussed in detail, Respondent's use of these extra crews was excessive for its stated needs. Respondent in fact used the crews to do other work besides the alleged emergency harvest, and Respondent offered no explanation for why the crews were used so extensively. The direct result of this extensive use of the crews was the reduction in the work for the regular crews. This excessive use of the additional crews belies Respondent's statements that it needed the crews for the emergency, and reveals that the ripening of the grapes was used as a pretext for bringing in outside work and reducing the work for its regular crews. The employment records, showing the type of work the extra crews, did, and Respondent's failure to adequately explain why it laid off some regular craws for two weeks after the early harvest, then did the late pre-harvest in one week with the help of ten extra crews, shows that Respondent's attempted justifi-

cation for using the extra crews to the extent it did were not based on true business needs but were motivated by animus towards the regular crews of Union supporters.

Respondent also did not offer any credible explanation at all for sending its regular crews home early in 1981 after they engaged in the Union activities.

Upon the entire record, I find and conclude that Respondent seized upon the additional harvest requirements to bring in large numbers of extra crews and used those crews not just to meet the extra harvest demands, but to reduce work opportunities for its regular crews in retaliation for the Union activities of those crews.

In sum, I find and conclude that in the 1981 harvest Respondent employed additional harvest crews for the purpose of, and with the result of, reducing work for its regular crews because of the Union activities of those regular crews, known to Respondent, in violation of Section 1153 (a) and (c) of the Act.

VIII. REFUSAL TO PAY UNION DUES AND BENEFITS UNDER THE COLLECTIVE BARGAINING AGREEMENT

A. Findings of Fact

There are no disputes as to the fact concerning this allegation. On October 4, 1981, Respondent and the Union signed a collective bargaining agreement. (GCX:52). Under Article 2 of that contract, Respondent agreed to deduct dues from the paychecks of employees:

"The Company agrees to deduct from each employee's pay, initiation fees, all periodic dues and assessments as required by the Union, upon presentation by the Onion of individual authorizations signed by the employee, directing the Company to make such deductions...."

Article 37 of the contract required Respondent to submit the withheld dues to the Union each week: "Withheld dues are to be submitted weekly.... The Company understands and agrees that it shall be deemed delinquent with respect to the Union for any payroll month in which the dues are not submitted weekly...."

Article 3Ø required Respondent to contribute to the Robert F. Kennedy Farm Workers Medical Plan:

"Section 1. The Company shall, commencing August 31, 1981, contribute to the Robert F. Kennedy Farm Workers Medical Plan, twenty-two (22) cents per hour for each hour worked by each worker.

Section 2. In accordance with Article 37 (Reporting) , the monies and summary report shall be remitted to the Plan at [address] .

Section 3. In the event the contributions and reports required here under are not submitted and postmarked on or before the due date specified in Article 37 (Reporting),the Company shall be deemed delinquent with respect to the Plan...."

Article 31 required Respondent to contribute to the Juan De La Cruz Farm Workers Pension Plan:

"Section 1. The Company shall, commencing June 15, 1981 contribute to the Juan De La Cruz Farm Workers Pension Plan ten (1Ø) cents per hour for each hour worked by each worker.

Section 2. In accordance with Article 37 (Reporting) the monies and a summary report shall be remitted to the Plan at [address].

Section 3. In the event the contributions and reports required here under are not submitted and postmarked on or before the due date specifiedin Article 27 (Reporting) , the Company shall be deemed delinquent with respect • to the Fund...."

Article 24 required Respondent to issue Vacation checks on February 15th of each year to cover vacation pay earned during the prior year:

"The Company shall provide vacations with pay to employees according to the following schedule, based on hours and gross earnings in the prior calendar year (January 1 through December 31):

A. All employees who worked one thousand (1000) hours or more in the prior calendar year shall receive an amount equal to three percent (3%) of their total gross earnings in. the prior calendar year.

• • •

C. The Company shall issue Vacation checks on or before February 15th of each year, and shall pro vide the Union with a list of all employees who

> received vacation pay and the amount each worker received, on or before such date."

It is undisputed that Respondent in fact did not make the payments required in these articles of the contract, and was repeatedly delinquent. It is also undisputed that Respondent did withhold Union dues from the employees' paychecks, but did not withhold Union dues from the employees' paychecks, but did not forward those dues to the Union. The Union was required to file numerous grievances on these matters forcing Respondent to comply with the contract (RT XXV:39-68; GCX: 128, 129, 13Ø, 126, 125, 127, 124).

Respondent's only explanation for its failure to comply with the contract was its unsupported assertion that it did not have sufficient funds. Union negotiator Deborah Miller brought up these delinquencies in the bargaining during the spring of 1982 for a new contract. She testified that Respondent's negotiators stated "that they paid when they had the money, they would pay when they had it. That was the position, that they didn't have it, they didn't have the money to pay, but they would pay when they had the money" (RT XXV:68). However, Ms. Miller further testified that when Respondent's negotiators refused new Union economic proposals at the same negotiations, the negotiators did not claim inability to pay as a reason: "I asked them at least once and I believe on more occasions if they were unable to offer wage proposals because they couldn't afford to pay, and they said

that no, that wasn't their reason" (RT XXV:68).

Respondent did not introduce any financial records demonstrating its inability to pay benefits.[21] Further, Respondent offered no explanation at all why, when it deducted Union dues from its employees' paychecks, it did not forward them to the Union. Respondent called a financial expert, Dr. David Friedman (RT XLVI:72-104), and attempted to introduce his testimony as to Respondent's financial condition based on an examination of Respondent's records. However, Respondent stated that it would refuse to produce at the hearing or provide to the General Counsel any of the records on which Mr. Friedman's proposed testimony was based. When I ruled that as a matter of law Respondent was required to make available the basis of its expert's testimony, Respondent did not press further with Mr. Friedman's testimony.

Ms. Miller testified that the workers were upset about Respondent's failure to pay the benefits:

> "A. Well, I understood from the workers that it was a very big problem, they were, you know they were getting their payment checks back, they were not getting their

[21]Respondent introduced a check from the United States government to Respondent, in the amount of five million dollars ($5, ØØØ,ØØØ. ØØ) on July 15, 1982. Respondent did not introduce any financial books or statements, or auditors reports or other records, indicating its specific financial picture. The check, which may have indicated that Respondent was solvent in July, does not indicate Respondent's financial condition throughout the contract from October 1981 through July 1982.

medical claims .. and they were very angry.

. . .

People were very angry about vacations. They were angry when they realized the dues weren't being sent in but they were being deducted. You know, they were very angry about those things." (RT XXV:65-66)

B. Conclusions of Law

In 1981 Respondent's employees engaged in Union activities, known to Respondent, as described in Section VI of this Decision, supra. The General Counsel alleges that Respondent's failure to pay Union dues and benefits under the contract signed in October 1981 was an attempt by Respondent to undermine the Union and to affect its employees' Union sympathies and activities.

Section 1153(a) of the Act prohibits an employer from interfering with, restraining or coercing its employees in connection with their exercise of protected union activities.

In Nagata Brothers Farms, 5 ALRB No. 39, the Board set out the test for a violation of Section 1153(a) of the Act:

"The test for a violation of Section 1153 (a) of the Act, like that for a violation of its counterpart Section 3 (a) (1) of the National Labor Relations Act, does not focus on the employer's knowledge of the law, on the employer's motive, or on the actual effect of the employer's action. It is well settled that:

> 'Interference, restraint and coercion under Section 8(a)(1) of the [N.L.R.A.] does not turn on the employer's motive or on whether the coercion succeeded or failed. The test is whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act.'"

(5 ALRB No. 39, p. 2. Citations omitted.)

Applying this standard to the instant case, I find and conclude that Respondent violated Section 1153 (a) of the Act. As described in Section VI of this Decision, supra, Respondent's employees and the Union engaged in a long, and often intense, struggle to get Respondent to sign a contract. When the contract was finally signed on October 4, 1981, Respondent refused to honor some of the most important benefits under the contract. Respondent's actions in this regard were not isolated, but were repeated. Further, Respondent offered no credible explanation of its ability to pay the benefits in a timely manner. Its assertion of financial straits was unsupported by documentary evidence, and is highly suspicious in view of its ability to make the payments each time grievances were filed. I find that Respondent's actions threw obstacles into the employees' success in achieving a contract, and had a natural tendency to undercut the employees' free exercise of their rights to choose a Union and bargain for a contract.

Further, Respondent's deduction of Union dues from employees' paychecks and then refusal to forward them to the Union is highly remarkable, and a clear indication of anti-union animus. Although, as noted in Nagata Brothers, supra, anti-union animus is not necessary for a finding of a Section 1153(a) violation, it is clear here that Respondent's activities in keeping the Union dues were motivated from desire to interfere with the Union. No other explanation for this unique act is plausible.

For the above reasons, I find and conclude that Respondent's failure to pay Union dues and benefits under the collective bargaining agreement signed on October 4, 1981, tended to interfere with the free exercise by its employees of their protected activities and rights to join and support a union, in violation of Section 1153 (a) of the Act.

IX. HIRING OF ADDITIONAL PRUNING AND TYING CREWS IN FEBRUARY 1982

A. Findings of Fact

1. Hiring of Additional Crews.

The General Counsel alleges that in February 1932 Respondent hired additional pruning crews for the purpose of reducing work opportunities for its regular crews (who had supported the Union), and that Respondent hired these additional crews without proper notice to the Union.

The harvest of the late grapes at Respondent's farms usually ends by October or November. The next major opera-

tion in the vineyards is the pruning and tying of vines. These operations are collectively referred to herein as "pruning" work. The evidence established without contradiction that in the years previous to 1982, the pruning was done by the regular crews and generally began in the middle of January, lasting approximately two to two-and-one-half months (8-10 weeks). Mr. Manuel Golindo, a member of Crew 52, testified that he had worked in Respondent's pruning crews from 1975 . through 1982, and that in the years from 1975 through 1981 the pruning lasted a little over two months each year, from about January 15th through the end of March (RT 711:20-21, 56). Mr. Alejandro Lopez, a member of Crew 54, testified that he had worked in pruning crews from 1975 through 1979, and that the pruning season lasted approximately two months and a week in those years (RT XV:25). Mr. Pedro Ramirez, a member of Crew 55, testified that in 1980 and 1981 the pruning lasted approximately two months each year (RT XII:41).

The testimony of these witnesses is supported by a payroll record Respondent introduced for a member of Crew 55, Mr. Luis Sanchez (RX:11). This record shows that in 1981 Mr. Sanchez began pruning work (with Crew 55) on January 19th, and he continued doing pruning work through March 14th. During this time he did pruning work on a total of 47 days.

In 1982 some pruning work was also done by the regular crews. These crews, Crews 51, 52, 54, 55, 56, 57, 58, 59, and 64, were the same crews referred to in Section VI of this

Decision, supra, who had participated in the picket lines the previous June and August. In the L982 pruning season, however, the uncontradicted testimony and payroll records reveal a dramatic change in the pattern of the pruning season. The evidence shows that in 1982 Respondent hired a total of 27 extra crews. The pruning season was only begun on February 4th, and Respondent used an average of 8 regular crews and 13 extra crews, with as many as 26 extra crews used on several days. As a result of this great increase in this number of crews, the pruning work was finished in an unprecedented three weeks, with 20 actual working days. Thus, the regular crews worked less than half as much as they had in previous years.

The payroll records and other exhibits reveal the precise breakdown of this work. Respondent's Pruning Crew list of 1982 shows 27 additional crews in Respondent's employ (GCX: 14). Respondent's payroll records show the following days worked (GCX:83):

Pruning and Tying Work -- 1982

Date	New Crew	Regular Crews
Feb. 4	1	1
Feb. 5	6	1
Feb. 6	6	1
Feb. 8	13	8
Feb. 9	16	8
Feb. 1Ø	14	8
Feb. 11	16	9
Feb. 13	15	9

Pruning and Tying Work – 1982

Date	New Crews	Regular Crews
Feb. 15	19	9
Feb. 16	13	9
Feb. 17	26	9
Feb. 18	25	9
Feb. 19	26	9
Feb. 2Ø	26	9
Feb. 22	26	9
Feb. 23	21	9
Feb. 24	3	9
Feb. 25	Ø	9
Feb. 26	Ø	9
Feb. 27	Ø	9
Total days=2Ø	Avg. New Crews=13	Avg. Reg. Crews=8

The figures are actually a little worse for the regular crews than even these averages show, since on the first three days Respondent used a number of new crews while only calling in one of the regular crews; thus, most of the regular crews worked for only 17 days.[22] There was testimony by members of some of the regular crews that this was the first time they had been in progress for several days (RT VI 1:58; XV: 26-29).

[22]The impact on the workers of the regular crews was not just the direct loss of work. As noted in Section VIII of this Decision, supra, certain benefits under the contract, such as the health plan, depended upon the worker getting a minimum number of hours. There was testimony that due to the short pruning season some workers lost medical eligibility for those months. (See, e.g., RT VII: 20-22).

In sum, the evidence shows that Respondent changed its pruning season practices in February 1982 by starting the pruning season late and by hiring a large number of additional crews, with the result that the pruning season was completed in approximately a third of its usual time, with a corresponding reduction in work for the regular crews who usually did that work.

At the hearing, and in its Post-Hearing Brief, Respondent asserts that the reason for the short pruning season in 1982 was that Respondent was short of money. Further, Respondent asserts that it notified the Union and of its intention to hire additional crews.

Concerning Respondent's assertion that it was financially unable to start the pruning season at the normal time in January, Mr. Caravantes testified that he was in charge of hiring for the pruning season (RT XLVI:116-118), and that "The reason that we had a short [pruning] season and a large number of crews is that I was under the impression that we had no money to work with at that time" (RT XLVI:104).

In spite of Respondent's assertion that it was in financial straits, however, it failed to introduce any documentary evidence at all to support the assertion. The sole documentary evidence Respondent introduced was a check for five million dollars it received from the federal government in July 1982 (RX:67). Respondent introduced no financial books or statements. The check possibly shows that Respondent's financial picture was good in July, but it sheds no light on

the financial situation in January-March. Further, it raises the question how, if Respondent was presumably in financial straits until July, it was able to pay a total of 37 crews for pruning work in February, an amount of labor hours approximately equal to the total worked by the regular crews in a normal three-month pruning season.

I do credit the testimony of Respondent's witneses that they told the Union that Respondent intended to hire additional crews in the period February 5-9.

The 1981-1982 collective bargaining agreement (GCX:52), which was in effect at the time of the February 1982 pruning season, required written advance notice to the Union of Respondent's intention to hire:

> "The Company shall give two (2) days advance written notice to the Union of its intention to accept applications, which notice shall state the estimated dates and period during which the Company will take applications, the office hours when applicants may report to the Company to make out application forms, and the Company's estimated needs for new hires." (GCX:52, Article 6, Section 3)

Mr. Caravantes testified that in January he sent a letter to Mr. Cervantes, informing him of Respondent's intention to begin pruning on February 5th, and to recall the regular crews and hire approximately 12 additional crews. A copy of the letter, dated January 29, 1982, was introduced into evidence (GCX:42). In it, Mr. Caravantes stated that he intend-

ed to recall one regular crew on February 5th and hire two new crews on that date; recall eight regular crews on February 8th and hire approximately 5 new crews on that date; and hire approximately 5 more new crews on February 9th. The employment records show that Respondent hired one regular crew and one new crew on February 4th, five new crews on February 5th, eight regular crews and seven new crews on February 8th, and three new crews on February 9th. Thus, in the letters Mr. Caravantes indicated an intent to recall a total of eight regular crews and hire approximately 12 new crews in the period February 5-9, and during the actual period of February 4-9 Respondent recalled eight regular crews and hired 16 new crews.[23]

Union representative Juan Cervantes admitted that Mr. Caravantes had notified him of Respondent's intention (stated in the January 29th letter) to hire approximately 12 new crews:

> "The company was telling us that they hadn't received their money from where they got it and that as soon as they got the money they would let us know when they were going to start pruning.... The company said that they were going to need additional crews if they got their money and David [Caravantes] said that he would be hiring additional crews per his letter. And since it was

[23]Respondent recalled Crews 51, 52, 54, 35, 56, 57, 59, and 64 in this period, and hired new Crews 28, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 47, 43, 29, and 3Ø (GCX:83).

so late in the season he had to get the work done one way or another.

• • •

We let them, we actually let them do the pruning with the allotted people that they had stated in the letter" (RT XXXVI:33-34).

Mr. Cervantes and Union representative Ben Maddock testified that they acquiesced in the hiring of the initial group of 12 extra crews because they felt they had no choice. Given Respondent's late start of the pruning, they were concerned that if Respondent did not get the pruning done there would be no subsequent harvest, and the workers would lose a considerable amount of future work:

"If the pruning doesn't get done, you're looking a [sic] a whole year. If you don't prune you don't pick it. That means you don't do the pre-harvest, you just don't do any — And we're looking at a lot of people, you know, 1700 people down the road in the harvest that are going to be out of a job." (RT XXXVII:54; Maddock}

"You're damned if you do and you're damned if you don't. We're caught there. The company was in a. hard place. We were led to believe by the company that there

was a hardship because of the financing that they hadn't received and we took David's [Caravantes] -- what he told us -- We took it into consideration, and being so late, and what we know about grapes and the area, and the buds, how important it is for a company to get a good crop and get the pruning done on time, we agreed to those conditions."

(RT XXXVI:35. Cervantes.)

In addition to the initial group of extra crews hired between February 5th and 9th, however, Respondent also hired an additional 10 crews on February 15-17. As to these crews, Respondent did not give notice to the Union. I credit Mr. Cervantes' testimony that he was not informed by Respondent of the total nature of the hiring, and it is undisputed that no written notice, as called for' in the contract, was sent to the Union concerning, these 13 crews. With this extra labor power, Respondent was able to complete the pruning work by February 27th, approximately 1-2 weeks earlier than it normally was completed.

In view of the above testimony, largely uncontradicted, and the payroll records and other exhibits, I make the following findings of fact concerning the 1982 pruning season:[24]

1. In the years prior to 1982 the pruning was done by Respondent's regular crews. It generally began about

[24]"Pruning" includes tying work as well as pruning.

January 15th, and lasted through the first or second week of March.

2. In 1982 Respondent did not begin the pruning work until February 4th, and completed it by February 27th.

3. The pruning work in 1982 was done in part by the regular crews, which were the crews referred to earlier in this Decision who had participated in the picket lines and other Union activities in 1981 known to Respondent, and also by 27 additional crews hired by Respondent.

4. Respondent notified the Union that Respondent would employ approximately 12 additional crews between February 5th and 9th. Respondent employed 16 additional crews between February 4th and 9th.

5. Respondent did not notify the Union about a further 10 additional crews it hired on February 15-17.

6. As a result of the delay in starting the pruning season and the use of a large number of extra crews, the regular crews lost approximately four to five weeks work compared to previous years.

7. Respondent did not offer any substantial evidence to support its contention that it was financially unable to begin pruning in January, or to explain why it was necessary to employ such a large number of additional crews that the pruning season was completed one or two weeks ahead of the usual time.

2. Change in Employment Application Procedure

The 1981-82 collective bargaining agreement (GCX:52) contained a provision stating that "Applicants [for work] may obtain employment applications from the Company's offices at the time when the Company is accepting applications" (GCX:52; Article 3, Section 3). The testimony was uncontradicted that at the time agreement took affect, Respondent used an Employment Application Form as shown in General Counsel Exhibit 35. Mr. George Johnston testified that in February 1982, on his own initiative and without notice to the Union, he changed the application form to a different form, the Personal Information Form shown in General Counsel Exhibit 86 (also RX:17).

The two forms differ- in substance. Specifically, the Employment Application used prior to Mr. Johnston’s change contained a place for the applicant to list his or her prior work experience. The new form contains no such information, though it does contain a box to check if the applicant had worked for Respondent previously. The new form also specifically asks the applicant if he/she is a resident of the United States, and if not, to list his/her visa number. The old application requested a permanent address, but did not request a visa number if the applicant was not a U.S. resident. The old application contained a line for the applicant to facilitate the contract provision which specifies preference for hiring family members. The new form does not contain any such information. The new form also contains

a statement above the applicant's signature that "I certify that the above statements are correct, and I understand that my employment may be terminated if any of my answers above are found to be false." The old application did not contain any such statement.

Mr. Johnston's testimony as to why he substituted the use of the new Personal Information Form for the Employment Application was extremely vague and unclear (RT XLIV:11-18). He stated 'that "All I was doing was trying to change the name of it..." (R XLIV:12). He also stated that he made the change "because on this old form there's a lot of blank spaces that -- We don't need that information. We don't care about it" (RT XLIV:15). Mr. Johnston gave no reasons why the new form required visa numbers, or the statement certifying the correctness of the information on penalty of termination. He also did not clearly explain why Respondent was no longer interested in the prior work experience of its applicants.

This issue as not one of the allegations in the charges or the complaint. I find, however, as the above testimony and exhibits show, that it was fully litigated at the hearing.

B. Conclusions of Law

1. Failure to Notify or Bargain with the Union on Hiring Additional Crews and Changing Employment Application.

The 1981-82 collective bargaining agreement, in effect during February 1981, contained a provision requiring

advance written notice to the Union of hiring. It also contained a provision that Respondent use employment applications, and it is undisputed that at the time the agreement took effect Respondent used the Employment Application form shown in GCX:85.

I have found that Respondent did notify the Union in writing of its intention to hire "approximately 12" additional pruning crews on February 5-9. Respondent in fact hired 16 crews on the dates February 4-9, but I find the change in dates and the difference in numbers of crews to be reasonably within the written notice given the Union.

I have found that Respondent failed to notify the Union of the hiring of 10 additional pruning crews on February 15-17.

I have also found that Respondent unilaterally, without notice or bargaining with the Union, changed the employment application it used for hiring, which change contained a number of changes in substance.

In Tex-Cal Land Management, Inc., 8 ALRB No. 85, the Board held:

> "Where a term or condition of employment is established by past practice and/or contractural provision, a unilateral change constitutes 'a renunciation of the most basic of collective bargaining principles, the acceptance and implementation of the bargain reached during the negotiations.' ... [A]n employer's unilateral change of any existing working condition without notifying and

> bargaining with the certified bargaining representative constitutes a per se violation of Section 1153 (e) and (a) of the Act. Where the change relates to a mandatory subject of bargaining, such as subcontracting and hiring, a prima facie violation of Section 1153(e) and (2) is established."
>
> (8 ALRB No. 85, pp. 5-6. Citations omitted.)

Here it is apparent that Respondent violated Section 1153 (e) and (a) of the Act. It plainly failed to follow the notice provision of the contract as to hiring ten additional crews, and it unilaterally changed the employment form established by contract and past practice. There were no extenuating circumstances or special justifications for Respondent's actions.

The fact that the change in employment applications was not charged does not preclude me from finding a violation of the Act, because the matter was fully litigated at the hearing. Anderson Farms Co., 3 ALRB No. 67; Prohoroff Poultry Farms, 3 ALRB No. 87; Highland Ranch and San Clemente Ranch, 5 ALRB No. 54.

Accordingly I find and conclude that by failing to notify the Union about the hiring of 1Ø pruning crews on February 15-17, 1982, and by unilaterally changing the employment application in February 1982, Respondent violated Section 1153 (a) and (e) of the Act.

2. Hiring of Additional Crews and Reduction of Work for Regular Crews (Section 1153 (a) and (c)).

Section 1153(c) of the Act prohibits "discrimination in regard to the hiring or tenure of employment, or any terra or condition of employment," in order to "discourage membership in any labor organization."

The Board's standards for establishing a violation under Section 1153(c), as enunciated in Wright Line Inc., 251 MLRS No. 150, Giumarra Vineyards, 8 ALRB No. 79, and Zurn Industries Inc. v. NLRB, (9.th Circuit 1982) 680 F. 2d 633, have been set forth in Section VII(B)(2) of this Decision, supra, and are incorporated here by reference. Essentially, this standard states that if the General Counsel proves a prima facie case that Union activities ware a motivating factor in Respondent's reduction of work for the regular crews, the burden shifts to Respondent to establish that the reduction would have taken place anyway, regardless of the employees' Union activities.

The Board has also made clear in a long line of cases that alleged unfair labor practices must not be viewed in isolation, but must be taken in context with the whole pattern of surrounding events and circumstances. See, e.g. , Karahadian, 4 ALRB No. 69; George Lucas and Sons, 5 ALRB No. 62; S. Kuramaura, 3 ALRB No. 49; Laurence Scarrone, 7 ALRB No. 13? O.P. Murphy & Sons, 7 ALRB No. 37; Bruce Church, Inc., 8 ALRB Mo. 81.

Viewed in the context of all the evidence in this case, I find that Respondent's shortening of the pruning work for its regular crews in February 1982 was part of its pattern of discrimination against those crews for their Union activity. The General Counsel has shown a prima facie case that Union activities were a motivating factor in the work reduction. The regular crews had always, in the years prior to 1982, done the pruning work in an orderly manner over a two-month period. Then, in June and August of 1981 they participated in the Union picket lines and other activities, known to Respondent. Respondent's supervisors demonstrated anti-Union animus at the time. Immediately following that Respondent, by the unprecedented and excessive use of additional harvest crews in the 1931 harvest, curtailed the harvest work for the regular crews. I have found that Respondent's motivation for this was the Union activities of those crews (Section VII of this Decision, supra). Then, in October 1981, Respondent signed a collective bargaining agreement, but failed to honor the important Union dues and benefits provisions of the contract. I have found that Respondent's actions in this regard were aimed at discrediting the Union (Section VIII of this Decision, supra). The next major work at Respondent's premises was the 1982 pruning work, and here again a sudden and dramatic deviation from Respondent's past practices is shown. The pruning season began three weeks late, and by the use of 27 extra crews (to 9 regular crews) Respondent completed all the pruning work in three weeks, compared to

the usual 8-10 weeks. Based on this pattern, I find and conclude that the General Counsel has met its burden of showing that the Union activities of its regular crews was a motivating factor in the 1982 pruning season changes which resulted in a reduction by more than half of the normal pruning work those crews received.

Turning to Respondent's attempt to demonstrate that there were business justifications for the pruning changes and that the work of the regular crews would have been reduced without regard to their Union activities, I find that Respondent has failed to offer credible proof. Once again it has simply offered conclusory testimony that economically it could not afford to start the pruning in January 1982. It did not proffer any business records to justify this conclusion. The only evidence it introduced was the check for five million dollars in July 1982, which completely fails to explain how Respondent was unable to pay any crews for pruning in January, but was able to pay 37 crews, four times its normal pruning workfore, in February. I find that Respondent has failed to demonstrate that the reduction compared to prior years would have taken place absent the Union activities of its regular crews, and thus has failed to meet its burden under Nishi Greenhouse, Giamarra Vineyards, Wright Line, and Zurn Industries, supra.

In sum, I find and conclude that the General Counsel has proven a prima facie case that the Union activities of its regular craws was a motivating factor in the reduction of

work for those crews in the 1982 pruning season, and that Respondent has failed to meet its burden of demonstrating that the reduction would have taken place absent the Union activities. Accordingly, I find and conclude that by starting the 1982 pruning season late and using 27 additional crews, Respondent reduced the amount of work for its regular crews because of their Union activities, known to Respondent, in violation of Section 1153 (a) and (c) of the Act.

X. SUBCONTRACTING OF WORK IN 1981 AND 1982

A. Findings of Fact

The General Counsel alleges that during 1981 and 1982 Respondent subcontracted or contracted four types of work regularly performed by bargaining unit employees: swamping work, tractor work, irrigation and related work, and pre--harvest and harvest work. The General Counsel alleges that some of this work was hired out to subcontractors within the meaning of the Act, and other work was contracted to labor contractors. In either case, the General Counsel argues, the removal of bargaining unit work was done without notice to or bargaining with the Union, in violation of Section 1153(e) of the Act, and was done to reduce work for Respondent's regular employees because of their Union activities, in violation of Section 1153(e) of the Act.

The 1981-82 collective bargaining agreement contained an article on subcontracting, and Respondent asserts that all the alleged instances of contracting out work (except one in

which Respondent admits it violated the contract) , fell within the employer's rights under the subcontracting article. That article read:

"ARTICLE 17: SUBCONTRACTING

A. The Company shall have the right to subcontract under the following conditions:

1. When the Company employees do not have the skills to perform the work to be subcontracted and when' the operation to be subcontracted requires specialized equipment not owned by the Company.

B. When the Company does subcontract, such subcontracting shall be limited to the following:

1. Harvesting of grapes for the winery, alcohol and raisins.

2. Harvesting of almonds and prunes by machine.

3. Tree-topping.

4. Installation of stakes and cross arms for new vines.

5. Installation of new irrigation systems.

6. Where specialized equipment is needed for the removal of vineyards.

7. The removal of almond trees and supporting devices.

8. All labor involved in the planting of permanent crops.

9. All transportation of wine grapes, raisins, canning grapes, grapes for alcohol, kiwis, almonds and prunes from field to buyer.

10. Training and hoeing of young grape vines for the first two years after planting.

C. All operations subcontracted in Section B above shall not be subject to terms and conditions of this Agreement.

. . .

E. The Company will notify the Union in advance of any subcontracting."

(GCX:52, Article 17)

1. Swamping work.

The General Counsel alleges that Respondent violated the Act by subcontracting out swamping work in 1981.[25] Swamping work consists of loading the boxes of harvested grapes onto trucks for transportation to storage facilities. It is done during the harvest periods for the early and late grapes.

Respondent admits that swamping work cannot be subcontracted under Article 17 of the contract, and Respondent admits that it violated the Act by contracting out swamping work to Brookins Trucking and R-T Trucking Company in 1981:

[25]Respondent was found by the Board in 8 ALRB No. 85 to have violated the Act by subcontracting out swamping work in 1980.

"A. [George Johnston]: I'm aware of Brookins for three or four days having one truck, I believe; and R & T for a couple of weeks having three or four trucks."

(RT XLV:10)

Respondent stipulated following Mr. Johnston's testimony, that "we had them [outside swampers] for three to four days in one truck from Brookins, and for a couple of weeks on three or four trucks from R & T" (RT XLV:11).

The General Counsel asserts that the amount of outside swamping work was greater than that admitted by Respondent. However, as the following discussion shows, it was difficult on this record to determine the exact extent of the swamping work that was done by the subcontractors.

Mr. Pedro Viramontes testified that he was employed by R-T Trucking at Respondent's farms for approximately 12 working days in October and November 1981 (RT VH:84-110). Mr. Samuel Viramontes testified that he worked for R-T Trucking at Respondent's farms doing swamping work at the end of August or the beginning of September 1931 (RT XXIV:5-7, 11-12), and also in November 1981 (RT XXIV:13). Mr. Viramontes testified that at times he drove an R-T Truck while doing swamping work, and at times a truck from Juvenal Montemayor (RT XXIV:14-16).

Mr. Juan Rodriguez testified that he has been employed by Respondent for five or six years, and that he knows all of Respondent's regular swampers. He testified that in 1981 he

saw outside swampers on several occasions. He saw two swampers in October 1981, using an R-T Truck. He also saw two swampers at the end of October using Juvenal Montemayor trucks (RT XIII:23-28).

Mr. Manuel Galindo testified that he worked as a swamper for Respondent and knows Respondent's regular swampers. He testified that in October 1981 he saw two swampers loading boxes onto an R-T truck. He also saw two swampers in October using a Montemayor truck {RT VII:12-16).

Ms. Aurelia Alvarez testified that she knows Respondent's regular swampers, and that in the 1981 harvest she saw "many" outside swampers (RT 7:115). She saw them in July and August, and they were loading boxes onto a Brookins Trucking truck (RT V:118). She testified that she saw more than one Brookins truck (RT V:121), and that she saw swampers loading boxes onto R-T trucks throughout the harvest (RT V:123).

Ms. Deborah Miller, the Union negotiator, testified that in 1981 she had a conversation with Mr. Caravantes, who informed her that Respondent would be using outside trucks 'for the swamping work in addition to Respondent's regular fleet of trucks. She testified that M. Caravantes agreed that no outside employees would do swamping work (Respondent's employees would be assigned to the trucks to do the actual swamping) (RT XXX:148). Ms. Miller testified that this was the only notice she received from Respondent about outside swamping work.

Mr. George Johnston testified that in 1981 Respondent

assigned two swampers to each truck. Initially he testified that each team of two swampers handled two harvesting craws (RT XLV:1Ø-11), but later corrected that to say that in the 1981 harvest there were about 2Ø crews doing harvesting work and twenty trucks doing the swamping (one truck per harvest crew; thus two swampers per harvest crew) (RT XLV:11).

Respondent did not introduce any records as to how many outside swampers it used, and it did not provide the General Counsel with any such records (RT XLV:1Ø). From the payroll records in evidence in this case, it was not possible for me to determine whether more outside swamping work was done than that stipulated to by Respondent.[26]

In sum, I find that Respondent subcontracted swamping work during the 1981 harvest to two outside employers, R-T Trucking Co. and Brookins Trucking. Outside swampers were employed for three to four days on one truck, and two

[26]General Counsel suggests that a comparison of the 1981 harvest crew records (GCX:1Ø) with the 1981 lists of Respondent's swampers (GCX:149) would reveal the information. The idea would be to determine the number of craws doing harvest work on a given day, and see whether twice that number of Respondent's employees was assigned swamping work (two employees per crew). On days when less than that number of Respondent's workers were shown to be doing harvest work, it would follow that the remaining swamping work was done by outsiders. However, an attempt to make this comparison quickly showed that often more than twice the crew number of swampers was listed on GCX:149. For example, July 24, 1981 shows 8 crews doing actual harvesting work and 23 employees doing swamping work. The patterns varied widely, and "it was apparent that no exact ratio of swampers to crews was followed on a daily basis. On ten days in August 1931 (August 1Ø, 11, 12, 13, 14, 15, 17, 13, 19, and 2Ø), less than twice the crew number of swampers were employed. However, given the generally fluctuating pattern, it is not possible to say that outside swampers were definitely used even on those days.

swampers were employed over a three-to-four week period on another truck. The Union was not notified about the subcontracting of swamping work, though such notification was called for in the contract. Employees testified that outside swampers were used more frequently, but from the evidence in this case it was not possible to determine the exact amount of outside swamping work.

2. Tractor Work.

The General Counsel alleges that in 1981 and 1982 Respondent subcontracted tractor work to Mr. Lemuel Lefler previously done by Respondent's regular tractor drivers.

Several of Respondent's tractor drivers testified that in 1981 and 1982 they saw Mr. Lefler, or outside workers (not regular Respondent tractor drivers) supervised by Mr. Lefler, doing tractor work usually done by them. Mr. Erasmo Espinoza testified that he has been a tractor driver for Respondent since 1977, and that Respondent's drivers used Respondent's tractors and equipment. He testified that in May, October, and November 1981, and in 1982, he saw Mr. Lefler or outside drivers supervised by Mr. Lefler, driving tractors not owned by Respondent. Mr. Lefler and the others were discing young vines (pulling a cutting disc with the tractor to remake the irrigation channels and loosen the soil between the vines). This was work regularly done by Mr. Espinoza (RT XX:2-12). Mr. Espinoza further testified that in November 1981 he was

given tractor work on some Saturdays, and on one of those days he saw Mr. Lefler discing the young vines (RT XX:14-15).

Mr. Eliseo Heredia testified that he has been a regular tractor driver for Respondent for three years.[27] Mr. Heredia testified that regular tractor work was normally done on Respondent's tractors and equipment, which the drivers got from the shop. In 1981 he saw tractors belonging to Mr. Lefler, doing the kind of work Mr. Heredia usually did in discing the young vines. Mr. Heredia testified that in 1981 he was given less days of tractor work than in 1980, and that he asked his foreman, Robert Dominguez, the reason. He testified that Mr. Dominguez replied "Because the contractor was there, there was no place for him to place us...." (RT VI: 22). Respondent did not call Mr. Dominguez to testify. Mr. Heredia further testified that on some days (Saturdays) in 1981 when Mr. Heredia was not given work, Mr. Lefler's workers did work:

> "As an example, they stopped us on Friday. Lem [Mr. Lefler] was working with the tractor. On Friday, they stopped us. We did not return Saturday, but we noticed where we got to. On Monday now, the stretch -- or the portion is way over here. It's very well noticed that he [Mr. Lefler] did the work." (RT VI:24)

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[27]Mr. Heradia testified that he had participated in Union activities in the fields, discussing union demands with other workers, in the presence of Respondent:' 3 supervisors (RT VI:7-8) .

Mr. Antonio Davila testified that he has been a. tractor driver for Respondent since 1976, and that the tractor drivers for Respondent usually use Respondent's tractors. Mr. Davila testified that in October and November, 1981, he saw Mr. Lefler doing work Respondent's regular tractor drivers usually did (discing young and old vines, and using a "chisel"). Mr. Davila also testified that he received less tractor work in 1981 and 1982, particularly work pulling wire to repair fences, than he did in 1980 (RT XIV:49-67).

The General Counsel introduced a number of invoices from Lefler Custom Farming to Respondent. Invoices from May 1981 through November 1981 (GCX:16),. show a total of at least $8,370 was paid to Lefler Custom Farming for discing young vines.[28] Invoices from January 1982 through August 1982 (GCX:102) show a total of at least $22,764 paid to Lefler Custom Farming for discing young vines.[29]

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[28]The 1981 invoices show (GCX:16):

5/25/81	$480.
9/7	1,120.
10/11	960.
10/26	960.
10/26	480.
10/20	1,440.
10/20	480.
11/2	90.
11/30	1,920.
11/30	480.
	$8,370.

[29]The 1982 invoices show (GCX-102):

1/13/82	$462.
1/13	180.
1/21	360.
4/29	1,920.
5/13	960.

In addition to discing young vines, Respondent's regular tractor drivers testified that their normal tractor work also included ripping (RT XIV:56; GCX:93), discing almonds (RT XIV-.60, XX:10; GCX:95), chiseling (RT XIV:64-67), flat furrowing (RT VI: 18, XIV:54), land planing (RT XIV:57), discing plum trees and prunes (RT XIV:51), cutting grass (RT XIV:63), discing old vines (RT VI:17), stretching wire (RT 30 XIV:49), and digging post holes (RT XIV:54). The Lafler invoices for 1981 (GCX:16) and 1982 (GCX:102) show that Respondent paid Lefler Custom Farming thousands of dollars for these operations.

5/13	$324.
5/13	480.
5/13	360.
5/13	288.
5/13	960.
5/25	1,080.
5/25	240.
5/25	720.
5/25	360.
5/25	720.
6/3	1,440.
6/8	720.
6/8	1,440.
6/8	1,920.
6/16	1,440.
6/15	960.
6/16	720.
6/16	648.
6/16	480.
6/16	960.
6/23	360.
6/23	430.
6/23	480.
8/16	840.
	$22,764.

[30]Some of these operations are done in connection with irrigation of the crops. Discing and flat furrowing can be used to prepare channels for water (RT VI:17-19, XIV:54).

Mr. Caravantes testified that Mr. Lefler sometimes worked as a supervisor for Respondent (RT 11:101), but that he also did tractor work for Respondent as an independent employer:

"A. Custom farming would be different -- that's the correct category. He's [Mr. Lefler] a custom farmer.

Q. Lefler did -- he disked [disced] young grape vines for Tex-Cal Land Management in 1981?

A. I believe he did do some discing of young grapes.

Q. Also land plane for Tex-Cal Land Management in 1981?

A. I believe he did do land plane in 1981.

...

Q. Okay. When Lefler was involved in these types of operations, he provided his own labor, isn't that right? His own laborers?

...

A. His own personnel drove his equipment. That's correct.

ADMINISTRATIVE LAW OFFICER: Mr. Cervantes, you're saying that when Mr. Lefler did the discing, land planing and flat furrowing, he was not doing that in his capacity as supervisor?

THE WITNESS: That's correct."

(RT 11:102-103)

Mr. Caravantes also testified that prior to 1981 tractor work was not subcontracted out:

"Q. To your knowledge prior to 1981 there was no subcon-

tract work provided for Tex-Cal Land Management involving tractor work?

A. Yeah, I have no knowledge of subcontracting of tractor work prior to 1981."

(RT III:69)

The testimony was uncontradicted that Respondent gave no notice to the Union, and did not bargain about subcontracting out tractor work in 1981 and 1982 (RT XXX:147-148).

Mr. Lefler testified that he worked as a supervisor for Respondent, but also independently supplied labor for tractor work(RT XXX:56). He testified that he used his own equipment and drivers when he supplied this work, and paid them himself (RT XXX:5-56, 1Ø6-1Ø8). He also testified that he does not keep regular business records for his employees; he writes notes on scraps of paper, then throws them away. Thus, he cannot tell from records which specific employees performed tractor work and where they performed it:

"Q. I'm going to show you a stack of invoices ... you billed Tex-Cal Land Management for a whole lot of tractor work, and what I want to find out from your payroll is who performed that tractor work and where they were doing it.

A. I would have no way of telling looking at this what guy drove that tractor what done that work at this moment.

• • •

ADMINISTRATIVE LAW OFFIER: Do you have any records other

than what's here? Do you have any records at your office or your home?

A. No.

• • •

Q. Could you tell me in February how many persons, how many tractor drivers you had working at Tex-Cal?

A. I have no way."

(RT XXX:104-105)

Respondent offered two justifications for subcontracting out the tractor work. First, it offered testimony that the work was permitted under the collective bargaining agreement because it required specialized equipment and skills. Mr. Lefler testified that the tractor work required specialized equipment, not owned by Respondent (XXX:106-120). However, Mr. Lefler admitted that a number of the kinds of work done, including discing young grapes, was the kind of work that Respondent's workers and equipment could perform (RT XXX:111-112). In one instance Mr. Lefler testified that some of the specialized equipment included three-point discs (RT XXX:110). However, Respondent's regular tractor drivers specifically testified that Respondent had this kind of equipment and that they used it (RT XIV:57-58; GCX:96). Given that these employees testified to actually having used the equipment, while Mr. Lefler was primarily concerned with his own equipment, and also noting the absence of business records on Mr. Lefler's part, I credit the employees' testimony on this point.

Respondent also offered testimony that regular drivers did not lose any work. The legal effect of this is discussed in the conclusions of law, infra. Factually, Mr. Lefler testified that before he brought in any of his own drivers and equipment, he carefully checked to see that all of Respondent's drivers and equipment was being used, so that no regular workers were displaced (RT XXX:117). However, at times he indicated that he just assumed the regular drivers were occupied:

"Q. On the next page [of Lefler invoices] March first, Ranch 56, the young seedless grapes and the discing, there is something that Tex-Cal people couldn't do?

A. They could have done it.

Q. Why didn't they?

A. They were probably tied up in something else."

(RT XXX:110-111)

Although Mr. Lefler testified that there was no reduction of work for regular drivers in 1981 or 1982, as noted the three regular drivers testified that they lost work. A comparison of the Respondent's payroll records (GCX:139) for November-December of 1980 and 1981 supports the testimony that there was a reduction in work for regular drivers. Comparing the number of regular drivers who worked during those two months in the jobs of discing, flat furrowing, cutting grass, ripping, and miscellaneous tractor work, the records show that in November-December, 1980, Respondent had regular drivers doing these jobs on a total of 42 days, with

a total of 324 worker-days. In 1981 the totals were only 31 days on which tractor work of those classifications were done, and a total of 177 worker-days.[31]

Based on all the above testimony, including the demeanor of the witnesses, and considering the payroll and documentary evidence, I make the following findings:

1. In 1981 and 1982 Respondent subcontracted tractor work to Lefler Custom Farming. This tractor work included discing young vines, ripping, discing almonds, flat furrowing, cutting grass, discing old vines, and discing plum trees and prunes.

2. The type of work listed in #1 above was previously done by Respondent's regular tractor drivers, using Respondent's equipment. Prior to 1981 it had never been subcontracted out.

3. Work for Respondent's regular tractor drivers was reduced in the categories listed in #1 above after that work was subcontracted out.

4. Respondent did not notify the Union or bargain with the Union about subcontracting out tractor work.

3. Irrigation and Miscellaneous Tractor Work. Respondent admitted that in 1981 it paid labor

[31]The totals in November were fairly comparable (1980: 143 worker-days; 1981: 154 worker days). There was a large reduction in December 1981 (1980: 131 worker-days; 1981: 23 worker-days). These records do not indicate whether other seasonal factors were at work. I do, however, find that they give support to the testimony of the General Counsel's witnesses that work was lost for Respondent's regular tractor drivers.

contractor Gilbert Renteria (Renteria Farm Services, Inc.) for irrigation work on Respondent's farms. However, Mr. Caravantes testified that the only work Mr. Renteria did "was setting up new irrigation systems"(RT V:22), something permitted under the subcontracting article in the collective bargaining agreement (GCX:52, Article 17).

There are some difficulties with Respondent's assertion that putting in new irrigation systems was the only work Mr. Renteria did. The General Counsel introduced the labor invoices from Mr. Renteria to Respondent for 1931 (GCX:50). Among the invoices are the following entries:

Data of Invoice	Job	Anount Paid
10/15/81	Irrigators	$1,214.91
11/31/81	Irrigation	1,070.59
10/12/81	Set Up Irrigators	784.58
10/26/81	Irrigation	802.94
10/12/81	Set Up Irrigation	708.48
5/19/81	Irrigation [and misc. work]	1,688.00
6/16/81	Irrigation [and misc. work]	7,116.61
7/02/81	Irrigating on [Ranch] #79 [and misc.]	1,207.04
7/02/81	Irrigators and Irrigating	703.24

When questioned about these invoices, Mr. Caravantes testified that where the invoices say "irrigators" or "irri-

gation," they do not mean what they appear to say. Rather, he testified, all the work was "set up" irrigation, and that meant installation of a new system:

> Q. Can you show me where the [invoices] say set up new irrigation systems?
>
> A. It doesn't say. It says irrigators on one. It says irrigation, set up irrigators.
>
> • • •
>
> Q. Doesn't that mean that he had irrigators working on that property -- setting up for the purpose of irrigation?
>
> A. Setting up a new irrigation system. That's what it means.
>
> Q. But it doesn't state on' there new irrigation, is that right?
>
> A. No, it doesn't. You asked me what it meant."
>
> (RT V:22-23)

Mr. Caravantes stated that Respondent did not notify the Union about Mr. Renteria's irrigators (RT V:23), and Union negotiator Miller testified that the Union was not notified and there was no bargaining about the irrigators (RT XXX: 147-143).

The testimony of several employees indicated that "set up" irrigation is a term of art at Respondent's farm, meaning a specific kind of regular irrigation done at Respondent's premises. Mr. Eliseo Heredia testified that he has been an irrigator and tractor driver at Respondent's farms for three

years, and that he and the other irrigators do the variety of irrigation work done by Respondent (RT VL:7-16). Mr. Heradia testified that set up irrigation involved placing short pipes in open ditches, and that Mr. Heradia performed this type of work in 1980 and 1981 (RT VI:15-16).

Mr. Leonardo Lara testified that he has worked for Respondent for 17 years, primarily as an irrigator and tractor operator. Mr. Lara testified that set up irrigation involves making a ditch and putting in pipes; the only equipment needed is a tractor with a shovel extension. Mr. Lara testified that he frequently performed this work, using Respondent's equipment (RT 11:21-22). Mr. Lara testified that set up irrigation is one of the types of irrigation used on Respondent's farm, along with flat furrowing, ditching, and using canals (RT 11:22-28).

Respondent did not call Mr. Renteria to explain the apparent inconsistencies between what Mr. Rentaria's records show, and what Mr. Caravantes testified that they mean.

Based on the above testimony and evidence, I find that in 1981 Respondent contracted irrigation work to labor contractor Gilbert Renteria (Renteria Farm Services, Inc.). From the invoices, I find that Mr. Renteria did regular irrigation work and provided irrigators to Respondent. The testimony of the employees supports this interpretation of the invoices, and Respondent failed to call Mr. Renteria to support Mr. Caravantes' conclusion that the invoices meant something different. Further, an examination of Article 17 (subcon-

tracting) shows that Respondent can subcontract for new irrigation systems only where "the Company employees do not have the skills to perform the work to be subcontracted and when the operation to be subcontracted requires specialized equipment not owned by the Company" (GCX:52, Article 17). I find that irrigation work, including set up irrigation, was work regularly performed by Respondent's irrigators, using Respondent's equipment. Finally, I find that Respondent did not notify the Union or bargain with the Union about contracting out irrigation work to Mr. Renteria in 1981.

I also find that Respondent contracted out to Mr. Renteria certain types of miscellaneous work regularly done by bargaining unit employees. Specifically, the Renteria invoices (GCX:50) show that in 1981 Respondent contracted out work stretching and pulling wire (see, e.g., 7/24/81), and cleaning fields (see, e.g., 9/25/81). Respondent's employees testified that this was work they had regularly done in previous years (RT XIV:49-50, 51; XXIV:32-33).

4. 1981 Harvest Work.

The General Counsel alleges that in the 1981 harvest Respondent contracted harvest crews from Mr. Renteria and other contractors, without bargaining with the Union and for the purpose of reducing employment for Respondent's regular crews because of their Union activity. However, I have already discussed the 1981 harvest, and have specifically

found in Section VII(A) and (3) of this Decision, supra, that Respondent violated Section 1153(a), (c), and (e) of the Act by hiring the additional harvest crews. Accordingly, I do not treat this allegation again here.

B. Conclusions of Law

1. Failure to Notify or Bargain with the Union (Section 1153(a) and (e)).

I have noted supra that in Tex-Cal Land Management, Inc., 8 ALRB No. 85, the Board held:

> "Where a terra or condition of employment is established by past practice and/or contractual provision, a unilateral change constitutes 'a renunciation of the most basic of collective bargaining principles, the acceptance and implementation of the bargain reached during negotiations.' Even after expiration of the contract, an employer's unilateral change of any existing working condition without notifying and bargaining with the certified bargaining representative constitutes a per se violation of Section 1153(e) and (a) of the Act. Where the unilateral change relates to a mandatory subject of bargaining, such as subcontracting and hiring, a prima facie violation of Section 1153 (e) and (a) is established."
>
> (8 ALRB No. 85, pp. 5-6. Citations omitted)

It is clear that in the instant case Respondent has violated Section 1153(e) and (a) by subcontracting and contract-

ing out the work described in this Section. Respondent admitted that it subcontracted bargaining unit swamping work to R-T Trucking Co. and Brookins Trucking Co. I have found that it also subcontracted bargaining unit tractor work to Lefler Custom Farming. Further, I have found that Respondent contracted out bargaining unit irrigation and miscellaneous work to Gilbert Renteria (Renteria Farm Services, Inc.).

Respondent has essentially offered no justifications or explanations for the above subcontracting and contracting out of work. Respondent admits it violated the Act by subcontracting the swamping work. Respondent's sole profferred justification for the irrigation work was that, as a factual matter, only new irrigation work was contracted out, and that was permitted by the contract. I have found this explanation to be factually false. Witnesses testified that normal irrigation work was contracted out, and the Renteria invoices refer to this work in terms ("irrigation," "irrigators") which on their face indicate that regular irrigation was done. The only testimony to the contrary was Mr. Caravantes' assertion that the invoices meant something else, and Respondent failed to call Mr. Renteria to explain the matter.

Respondent offers two justifications for the subcontracting of tractor work to Mr. Lefler. First, Respondent asserts that the tractor work required specialized equipment and skills, and thus was permissible under the collective bargaining agreement. However, I have found that factually this is erroneous. The types of tractor work listed in the

findings of fact, supra, were regularly performed by Respondent's employees using Respondent's equipment.

The only other justification asserted by Respondent is that no workers were displaced by the subcontracting and contracting out of the work. This argument is erroneous on two counts. First, I have found that in fact work was lost by regular employees. Second, in any event the displacement of employees is not a requirement for a finding of a violation of the Act; rather, it would just be involved in connection with implementation of a make-whole remedy for the violation. The Board in Tex-Cal, supra, stated:

> "Respondent fails to recognize that a unilateral change of an employer's hiring or subcontracting practice affects the terms and conditions of employment of the bargaining unit employees, regardless of whether bargaining unit members were actually displaced or suffered loss of employment or diminished income as a result of the change."
>
> (8 ALRB No. 85, p. 7)

Thus, the facts are clear that Respondent subcontracted and contracted out bargaining unit work without notice to or bargaining with the Union. Respondent has offered no justification or valid defense for its actions. Accordingly, for all the above reasons, I find and conclude that (a) in 1981 Respondent subcontracted swamping work, which work was regular bargaining unit work, to Brookins Trucking and R-T Trucking Co.; (b) in 1981 and 1932 Respondent subcontracted

tractor work that had been regular bargaining unit work to Lefler Custom Farming; and (c) in 1981 Respondent contracted out irrigation and miscellaneous work, which work was regular bargaining unit work, to Renteria Farm Services, Inc.; all of which subcontracting and contracting out of work was done without notice to or bargaining with the Union, in violation of Section 1153 (a) and (e) of the Act.

2. Reduction of Work for Regular Employees (Section 1153(a) and (c))

The General Counsel alleges that the subcontracting and contracting out of work was done by Respondent in order to reduce work opportunities for its regular employees because of their support for the Union, in violation of Section 1153(c) of the Act.

The legal standards for finding a violation of Section 1153 (c) of the Act have been set out in Sections VII (B) (2) and IX (B) (2) of this Decision, supra, and are incorporated here by reference. Essentially the standards provide that if the General Counsel proves that Union activities were a motivating factor in the subcontracting of work, the burden shifts to Respondent to prove that the consequent reduction of work for regular employees would have occurred anyway, even absent the Union activities of the employees.

Taking the facts in the overall context of Respondent's actions during 1981 and 1982, I find that the General Counsel has shown that the Union activities of its regular employees

were a motivating factor for Respondent's increased subcontracting of work. I have already found that after the picket lines in the summer of 1981, Respondent sought to undercut the Union and its Union employees by reducing their work through the unprecedented addition of outside harvest crews in 1981, and by shortening the pruning season in 1982 through the addition of outside pruning crews. The subcontracting shows the same picture. In 1981, after the picket lines, Respondent increased its use of subcontracting by subcontracting out three types of work -- swamping, tractor work, and irrigation work -- which had been done by regular employees. Respondent admitted that prior to 1981 it had not subcontracted out tractor work, and admitted its violation concerning swamping work. I find no plausible explanation on the record of this case, other than the Union activities of its employees, to explain Respondent's change in its swamping, tractor, and irrigation work.

Turning to Respondent's attempted justifications, as noted in the preceding section, Respondent has really offered no justification at all. Concerning the tractor work, where I have found that regular employees lost work, Respondent's only justifications were that employees did not lose work, and that the subcontracting of tractor work was permissible under the contract. I have found that neither of these statements is correct, and I find the record devoid of any showing by Respondent of a neutral business reason for reducing the work of its regular employees through subcontracting and contracting the areas- of swamping, tractor work,

and irrigation.

Accordingly, I find and conclude that by subcontracting and contracting out swamping, tractor work, and irrigation, Respondent reduced work opportunities for its regular employees because of their Union activities, known to Respondent, in violation of Section 1153 (a) and (c) of the Act.

XI. 1982 HARVEST

A. Findings of Fact

The General Counsel alleges that in the 1982 Harvest Respondent undertook a number of actions in its hiring, seniority, discipline and employment practices, without notice to the Union and for the purpose of discriminating against the regular employees because of their Union activities.

1. Hiring 37 Workers on June 14, 1982.

The General Counsel alleges that on June 14, 1982 Respondent hired 37 new workers into Crew 61, without notice to the Union.

The 1981-82 collective bargaining agreement (GCX:52) contained a notice of hiring provision: "The Company shall give two (2) days advance written notice to the Union of its intention to accept applications, which notice shall state the estimated dates and period during which the Company will take applications, the office hours when applicants may report to the Company to make out application forms and the Company's estimated needs for new hires" (GCX:52, Article 3,

Section 3). This agreement expired on June 6, 1982. Its legal effect after that date is discussed in the Conclusions of Law, infra.

From the testimony and records in evidence, I find that Respondent hired 37 new members for Crew 61 on June 14, 1982. The payroll records (GCX:34) show that on June 14th, shortly after the 1982 pre-harvest began, Respondent recalled Crew 61, with a total of 48 employees working in that crew. The General Counsel introduced a list from Respondent (GCX:135) which shows new hires for the 1982 harvest. Although this list is entitled "Thinning, Leaf Pull," I find that it does show new hires. Ms. Deborah Miller testified in detail about the list:

> "Q. I want to show you [GCX] 135 and ask you about that. Is this the list that you were given by the company?
>
> A. Yes.
>
> Q. Do you remember when that was or approximately when that was?
>
> A. I requested right after that August 17 [1982], I requested a list of all employees hired by the company since March 1982, all new employees and they provided this. They ran it on the seventh of September and I was probably provided with it shortly after the date they ran it.
>
> Q. And this is the list that you used to make the notes that you're referring to?

A. Yes. This list is set up by crew. For example, it has Crew 50 on the first page. That's all the employees hired as new employees in Grew 50 since March of 1982. And then there's a page for Crew 51, 52, crew by crew listing the new employees hired in each crew since March of this year [1982]."

(RT XXVI I:85-86)

Mr. George Johnston initially testified that General Counsel's Exhibit 135 was a list of new hires: "This appears to be new hires. Exactly what it was, or what we told he union when we handed it over, I don't recall"(RT XLIV:112).

General Counsel's Exhibit 135 shows that on June 14, 1982, the date Crew 61 was recalled for the harvest, 37 new employees ware hired into that crew.

Mr. Johnston admitted that he did not give notice to the Union of the hiring on June 14th (RT XLIV:113), and he testified that he gave seniority recall rights to the new people in Crew 61 who hadn't worked in the previous harvest (RT XLIV:111-112). Union representative Juan Cervantes testified that no notice was given to the Union (RT XLVII:103), and the record indicates that no written notice, as called for by the 1981-82 contract, was ever sent.

Respondent at the hearing and in its Post-Hearing Brief offered as an explanation for the failure to notice, the Union about this hiring that there was an established practice that Respondent did not have to notice the Union when it only hired a few employees who were related to current crew

members, to fill out a crew:[32]

> "At no time prior to the allegations [concerning Crew 61] has the Onion ever made an issue of notice requirements for family preference hiring or the hiring of a few persons to fill out a crew."
>
> (Post-Hearing Brief for Respondent, p. 35)

However, whatever the parameters of such an exception to the notice provision, the Crew 61 hiring clearly falls outside them. First, by no stretch could hiring 37 members of a 48-person crew be considered "hiring a few persons to fill out a crew." Respondent offered no other examples of Union acquiescence in such a large amount of hiring for a crew. Mr. Johnston testified:

> "Q. ... [Y]ou may be hiring 20 or 33 people?
>
> A. Well, that's an awful extended family. I've seen it happen with a couple of people.
>
> Q. You still don't think the union would want notice of anything like that?
>
> A. That's pretty hypothetical. I don't think it's happened before."
>
> (RT XXVII:107)

Second, Respondent introduced no evidence that the 37 people hired into Crew 61 were in fact family members of other employees. Mr. Johnston[1]s testimony concerning family members was often vague. For example, concerning one craw he

---

[32]The contract called for hiring prafarence for relatives (GCX:52, Article 3).

was asked why he had hired 10 new members:

"Q. Why didn't you notify the union?

A. Relatives -- hired relatives.

Q. All ten were relatives?

A. I bet they are."

(RT XXVII:110)

Concerning another crew, Mr. Johnston was asked about new hires:

"Q. Who are they related to?

A. Some of the other people in the first -- whatever number it is there.

Q. Did you keep any record of that?

A. No, it's too hard. It's very hard to fill in crews, you know. Very rough."

(RT XXVI 1:109)

Further, as noted in Section IX(A)(2) of this Decision, supra, Mr. Johnston unilaterally changed Respondent's employment application in February 1982 and eliminated the line (from the former application) which asked the applicant to state if he/she was related to any of Respondent's employees (GCX:86). Respondent did not offer specific proof of family relationship for most of the 37 new hires.

In sum, I find:

(1) On June 14, 1982, at the beginning of the 1982 harvest (and pre-harvest) season, Respondent hired 37 new employees into Crew 61.

(2) Respondent did not notify the Union about these new hires.

(3) The 1981-82 contract, which expired on June 6, 1982, called for written notice to the Union of new hires.

(4) Respondent offered no specific evidence that the June 14th hires fell within an exception (to the notice provision) for family members or for hiring a small number of employees to fill out a crew.

2. Hiring Workers August 17-25, 1982.

The General Counsel alleges that Respondent hired approximately 100 workers in the period August 17-25, 1982 without proper notice to the Union, and in a manner intended to discriminate against prospective employees furnished by the Union.

The 1981-82 collective bargaining agreement contained a provision (discussed in the preceding section of this Decision) which called for two days' written notice to the Union of Respondent's intention to hire new workers. On August 16, 1982 Mr. Johnston sent a letter to Union representative Juan Cervantes, stating:

> "We are in need of more workers to fill vacancies in our crews.
>
> We shall be hiring at the Jailhouse at 6:00 a.m. tomorrow. Please inform anyone who might qualify for harvest work." (GCX:79)

The letter gave the Union one day's notice, and did not specify the approximate number of employees to be hired. The contract provision called for the notice to state "the Company's estimated needs for new hires" (GCX:52, Article 3, Section 3).

The payroll records and lists of new employees show that in the period August 17-25, 1982, Respondent hired a total of 106 new employees:

August 17	31 new employees
August 18	27 new employees
August 19	10 new employees
August 20	3 new employees
August 21	3 new employees
August 23	17 new employees
August 24	6 new employees
August 25	9 new employees

(GCX:135, 122, 148)

These employees were hired into existing Crews 51, 52, 54, 56, 58, 59, 61, and 64. In addition, Crews 62 and 63 were established on August 17th and August 13th, with 14 new employees constituting Crew 62, and 17 new employees among the 24 employees in Crew 63 (GCX:122, 135).

The testimony concerning the manner in which the 106 new employees were hired showed the following.

Two employees, Mr. Jorge Orosco and Mr. Alejandro Lopez testified that, when Respondent informed the Union on August 16th that there would be hiring at the jailhouse on the 17th,

they notified people to come to the jailhouse. Mr. Orosco and Mr. Lopez arrived at approximately 5:00 a.m. There were about 200 people there who had been notified by Mr. Orosco, Mr. Lopez, and others on behalf of the Union. Mr. George Johnston showed up at about 6:00 a.m. and announced that only a few people would be hired that day, about ten. At that point Mr. Elias Munoz, Respondent's representative, drove up with some people in his car. Mr. Johnston gave the people in Mr. Munoz' car employment applications to fill out. He did not give applications to the 200 people assembled there. Mr. Johnston told the group that he intended to hire 30 people the next day, and he passed, out 30 numbered slips of paper to the group, telling them to apply the next day. None of the people who were there with Mr. Orosco or Mr. Lopez were given applications or were hired by Respondent (RT VI:39-92; XV:40-43).

Mr. Johnston testified at length to the hiring during August 17-25. He admitted that approximately 100 people were hired during this time (RT XLIV:95). Mr. Johnston stated that he hired only 11 people at the jailhouse on August 17th, and that four or five of these were the people brought by Mr. Munoz (RT XLIV:98; XI:124). He testified that the reason he did not hire more people brought to the jailhouse by the Union, and that he did not notice the Union for subsequent hirings, was that most of the people hired during August 17-25 were relatives of employees and thus did not have to be hired with notice to the Union. However, his testimony on this point

was vague and unsupported:

"Q. I would like to ask you to give me a rough idea of how many people, of those new hires you hired during that period, you feel would qualify as family preference new hires.

A. I really have no idea. I'd guess ten or twenty. Twenty would be a good -- ten to twenty.

• • •

A. Well, let me take that back. It would have to be more. Crew 62 started short and had a lot of family hiring. Crew 63 started short and had family hiring. So those two crews there would -- I'd put that at ten to twenty each, plus another ten in the other established crews. It's got to be more, like 30 to 40, family hiring.

• • •

Q. See if you can recognize any of those names and tell me why you hired those people into Crew 62.... Who are they related to?

A. Some of the other people in the first -- whatever number it is there.

Q. Did you keep any record of that?

A. No, it's too hard. It's very hard to fill in crews, you know. Very rough.

• • •

Q. [O]n the 23rd, you had a need to make a major addition to Crew 61 and add about ten new people.... Why didn't you notify the union?

A. Relatives -- hired relatives.

Q. All ten were relatives?

A. I bet they are.

Q. I will show them to you.... The question was whether the ten people were related to each other.

ADMINISTRATIVE LAW OFFICER: Mr. Johnston, make sure that you're not guessing. From what you just said I'm wondering if you are guessing. If you don't know the answer, be sure to say you don't know. Don't guess at answers. THE WITNESS: Okay. Well then, I don't know the answer. ADMINISTRATIVE LAW OFFICE: Maybe you are not guessing. I just --

THE WITNESS: Well, the only explanation is that they're family of some of these other people. That's the kind of hiring we were doing around then.

ADMINISTRATIVE LAW OFFCER: You are saying that because that was the kind of hiring you were doing, not because you specifically remember those ten. Is that correct? THE WITNESS: Oh, specifically I don't remember these ten."

(RT XLIV:96, 109-111).

Mr. Johnston also admitted that on August 17th, the same day he notified the Union that hiring would be conducted at the jailhouse, Respondent hired a new crew (under foreman Junior Galindo) at Ranch 36 on Respondent's premises.

"Q. How did Junior Galindo get all of those folks [for his crew] there on Ranch 36? Did you tell him just to

bring some folks out there to Ranch 36 that morning?

A. Yes.

Q. You noticed the union to go to the jailhouse, and you noticed Junior Galindo to go to Ranch 36. Why did you do it like that. Why did you tell them to go to two separate spots like that?

A. Well, Junior's one of our regular crew bosses and he had some people. He knew where the ranches were." (RT XLIV:101-102)

Mr. Galindo's crew initially had only 14 people in it, although it was intended to be a 30-person crew. Mr. Johnston was asked why he did not fill out the remainder of Mr. Galindo's crew with people assembled at the jailhouse:

"Q. Why didn't you' pick out 30 people from the jailhouse group and send them over to Ranch 36 so that Galindo could have a full 30-person craw from the jailhouse?

A. We'd already made the arrangement. We didn't know how many — or I didn't know how many -- I had no idea of how many were going to be at the jailhouse. And he had some people. He's one of our regular crew bosses. I thought we could accommodate both of them.

Q. Why didn't you notice the union that you were hiring a new crew there in Crew 62 with Galindo?

A. I said I don't know how many people are going to show up on the 17th and assumed we could accommodate both of them.

Q. The contract says you are supposed to give 48 hours notice of such hiring. Aren't you?

A. Yes.

Q. Well, why didn't you call them up and say, 'We want to hire 30 people in this new Crew 62. Can you give us 33 people?

A. You want me to repeat for the third time?

Q. Okay. Is the answer the same?

A. Yeah.

Q. ... Why didn't you just take the 16 folks from the jailhouse, bring them over to Ranch 36, and make a full crew in Galindo's crew at Ranch 36?

A. Because they all reported at six o'clock. And I assumed he had 30 people. I can't be at Ranch 36 and the jailhouse at the same time, so I went from the jailhouse to Ranch 36 or whatever the ranch number was.

Q. When you got there, you said, 'Oh, darn. I let all of those people there and I could have had jobs for them.

A. I could have filled in the craw, but --

Q. Did you call the union?

A. We took care of it with filling in with those people's relations.

Q. Did you call the union up and say, 'Hey, I've got 16 spots out here. Do you think any of those people would be wanting to come back and to to work?

Q. No ." (RT XLIV:132-103)

Mr. Johnston indicated some confusion over the number of people per crew that he intended to hire:

Q. You were hiring 40-person harvest crews, right?

A. No.

Q. What were you hiring there on the 17th?

A. Pre-harvest, 30 --

Q. Were you hiring all pre-harvest?

A. 30 people, pre-harvest.

• • •

Q. Why on the [August] 18th, Mr. Johnston, were you hiring 41 people in Crew 51 to do pre-harvest work on Ranch 71 on variety four, the Emperors?

A. I must have been thinking they were going to harvest pretty quick." RT XIV:101-102, 108)

Ms. Deborah Miller testified that she received Respondent's letter on August 16th and notified people to come to the jailhouse the next day. Approximately 150-230 people arrived at the jailhouse in response to notification by her and by Union ranch committee members (RT XXVI1:24-31) . She testified that Mr. Johnston arrived at about six a.m.:

"A. [I] asked him how many people he was going to hire and he said he was planning on hiring ten to fifteen people to fill out Lupe Arreola's crew and he might put on another crew sometime, but not that day. All he intended that day was to put on 10 or 15 people. And then he said he already had five people who came with Elias [Munoz]. And I said why are Elias' five the five that are going to get the jobs. And he said, if you don't like it, you can file a grievance.

Q. What was the practice at the company and the position of the company on the table regarding the order of applicants?

A. That applicants be hired first come, first serve as they arrived. They were hired first come, first served.

Q. Okay. To your knowledge, had Elias' group arrived first?

A. No."

(RT XXVII:29)

Ms. Miller testified that Mr. Johnston then stated he intended to hire 30 more people the next day, and he passed out numbered scraps of paper to the crowd, in no particular order. Then he called names of people, and gave them employment applications and told them to return the next day (RT XXVII:30). Mr. Johnston did not follow a first-come, first-served basis in calling out the names of people to whom he gave applications (RT XXVII:30). People in the crowd milled about in confusion, asking Ms. Miller what was going on (RT XVII:30).

Based on the above testimony and evidence, I find:

(1) The collective bargaining agreement of 1981-82 required two days' written notice to the Union of Respondent's intention to hire, and the estimated number of workers to be hired.

(2) On August 16, 1982 Respondent gave the Union a one-day written notice of its intention to hire on Augus-17th. The notice did not state the estimated number of hires. Respondent did not give the Union any other notice

for hiring in the period August 17-25.

(3) Respondent's hiring practice for new employees was to hire qualified people on a first-come, first-serve basis, except for family preference hiring.

(4) On August 17, 1982 approximately 200 people gathered at the jailhouse in response to the Union's notification to them of Respondent's intention to hire. Respondent hired 11 people at the jailhouse that day. Five of the people hired came to the jailhouse with Mr. Elias Munoz, and were hired ahead of the other people who had gathered there.

(5) On August 17, 1982 Respondent hired an additional 20 people, mostly at Ranch 36. Respondent did not give the Union notice of this hiring.

(6) On August 18-25, Respondent hired approximately 75 additional workers. Of this number, approximately 30 may have received applications at the jailhouse on August 17th. The people who received applications at the jailhouse were selected by Mr. Johnston, not on a first-come, first-serve basis.

(7) Respondent offered no specific evidence to support Mr. Johnston's assertion that many of the new hires during the period August 17-25 were family relatives. As described above, Mr. Johnston[1]s testimony on this point was largely general. For the great majority of new hires, there was no evidence that specific individuals hired were family relatives.

3. Transfer of Employees in July 1982.

There is no dispute that in July 1982 Respondent transferred approximately 80 employees to different crews, usually moving employees into more senior crews from junior ones. Mr. George Johnston testified:

"Q. How many people did you transfer around? A. I would say probably about 80, maybe a little bit more.

Q. What was the time period during which you made these transfers?

A. It was from their first arrival in Arvin till all of the crews were working, probably a period of two to three weeks. I believe we — I don't recall the date we started in Arvin. It was the middle of July, I believe.

• • •

Q. What did you say, three weeks?

A. Two-and-a-half — two to three weeks, probably about three weeks."

(RT X:79-80)

There is also no dispute that the transfers affected seniority rights of the employees. At the time, Respondent had several seniority systems, but one of the basic seniority systems was recall by crew. For each agricultural season, Respondent had crews recalled and laid off by seniority of the crew. (See RT X:34-83; XXXVI:61; Post-Hearing Brief for Respondent, p. 39).

Respondent asserted two justifications to show that the

transfer of employees was permissible. First, Mr. Johnston testified that the transfer of employees was within the management rights provision of the 1981-82 collective bargaining agreement. Second, Respondent primarily relied on the testimony of Mr. Johnston that Union representative Juan Cervantes was consulted about the transfers and agreed to them prior to the employees being transferred.

Regarding the management rights provision of the 1982-82 collective bargaining agreement, Mr. Johnston testified that the right to transfer employees was within the general management rights provision of the contract (RT XLIV:25). However, the issue of transferring employees was being discussed in the bargaining for a new contract (See RT X:34-80; XLIV: 23-28), and the issue was raised in the bargaining by Respondent in a proposal Respondent introduced to permit such transfers (RT XLIV:26). Further, Mr. Johnston conceded that changing an employee's crew seniority was a matter about which Respondent had to "deal with" the Union:

> "Q. ... Isn't it true when you begin to talk about changing a worker's crew seniority, that has always been a matter on which you have been compelled to deal with the union? Isn't that correct?
>
> A. Yes.
>
> • • •
>
> Q. You did feel that it was something that you had to bring up to the union, ... didn't you?
>
> A. Well, yes."
>
> (RT XLIV:24-25)

Respondent did in fact bring the matter up with the Union, at a grievance meeting (concerning other matters as well) on July 8, 1982. Respondent's main justification for the transfer of the employees is based on Mr. Johnston's testimony that Union representative Juan Cervantes agreed at that meeting to the transfers:

"Q. At which [grievance meeting] did Cervantes tell you in anyway whatsoever that he or the union would go along with your transferring the people around to solve the seniority problems?

A. July 8th.

Q. The only time was July 8th?

A. That's correct.

• • •

Q. Could you tell me, as best as you can remember, the details of the conversation that you had with Cervantes in which you said things to him and he said things to you that caused you to believe this?

A. We were going to call back crews within a few days. We discussed the problems with the senior people being in the later crews. David [Caravantes] and I -- well, mostly myself -- told him, suggested that we transfer more senior people up in the crews, into the more senior crews. Ha didn't see any problem with that. And the last thing was -- What was it? Yeah, he didn't see any problem with it.

Q. Do you remember his words?

A. I believe he just said, 'I don't see any problems

with that, and I'll get you a confirming letter on it.' That's right. He said, 'I'll get you a confirming letter on it.'"

(RT XLIV:27-28)

Mr. Johnston stressed that Mr. Cervantes stated he would provide a confirming letter:

"Q. I want to know if there was anything else that Cervantes said to you at any time that caused you to believe that he agreed with your making seniority transfers to solve the seniority problem?

A. I think it was the final thing. 'Okay, it looks fine.' Or, 'Okay, I'll get you a confirming letter.' ... There, was some affirmative 'yes,' or 'Okay, I'll get you a confirming letter.'"

(RT XLIV:34)

The evidence shows that no confirming letter was sent. To the contrary, Mr. Cervantes sent a letter date July 13, 1982 (GCX:69) stating:

"As per our telephone conversation of July 9, 1982, the issue on the trucks and swampers wages and hours of work and moving senior employees to high seniority crews are both issues of extreme importance that I will discuss with the Negotiator, Deborah Miller, and the Negotiating Committee.

Upon discussing these issues with them, then I will contact you and we can set a data to address the changes."

(GCX:69)

Mr. Johnston admitted that he transferred the employees without receiving a confirming letter:

> "Q. You proceeded without a letter of confirmation, right?
>
> A. That's right."
>
> (RT XLIV:34)[33]

Further, Mr. Johnson stated that on July 15th, he received Mr. Cervantes' letter (GCX:69) but that he continued to make transfers after that date:

> Q. [W]hat if anything did you do in connection with these transfers [after receiving Mr. Cervantes' letter on July 15th]? Did you stop making your managerial transfers?
>
> A. No.
>
> Q. Did you stop making these transfers designed to cure the seniority problem?
>
> A. No.
>
> Q. I think you testified that you made 88 transfers

[33]Respondent initially referred to a letter (RX:34, dated July 8, 1982) as a confirming letter from Mr. Cervantes. (See RT XLIV:30-34). However, Respondent does not press this point, since that letter clearly refers to another matter (employee, numbers as they relate to seniority) and to a meeting of June 33, 1982, not the July 8th meeting at which the matter of transfers was raised (RX:34). Counsel for Respondent indicated at the hearing that there were two separate matters, involving two meetings and two different promises of confirming letters (RT XLIV:32). Thus, the letter dated July 8th, referring to the meeting on June 30ch, is not the confirming letter for the issue of transfers of employees. As noted above in text, a leter was sent on July 13th, but Mr. Cervantes indicated in it there was no agreement about transfers.

between July 15th and August 1st. Is that basically your recollection?

• • •

A. That sounds like a pretty close number."

(RT XLIV:41)

That the transfers took place after the receipt by Respondent of Mr. Cervantes' July 13th letter (GCX:69), is confirmed by Mr. Johnston's testimony concerning the first transfer of employees in this period. On July 14th he notified the crew bosses (foremen) of his intention to transfer employees. On July 15th, the day he testified Respondent received Mr. Cervantes' letter (RT XLIV:37), the paperwork of transferring the workers was done, and "then they went to work on the following morning, on the 16th" (RT XLIV:37).

Mr. Cervantes' initial testimony about this issue was vague (see RT XXXVI:66-96), though he did deny agreeing to any transfers (RT XXXVI:92-93). Later he testified that he did recall the July 8, 1982 grievance meeting and that he did not agree to any transfers (RT XLVII:102-104). I do not rely on Mr. Cervantes' testimony on this issue. However, from Mr. Johnston's own -testimony I find that any agreement on transfers was subject to written confirmation by Mr. Cervantes. As discussed above, Mr. Cervantes' letter of July 13th, received by Respondent on July 15th prior to any workers

actually working in their transferred crews, indicated that there was no agreement on the issue of transfers, and that he intended to discuss it with the Onion negotiators.

In sum, I find:

(1) Approximately 80 employees were transferred to different crews in the period July 15th to approximately August 1, 1982.

(2) The transfers affected craw seniority of the employees involved.

(3) Transfer of employees, affecting seniority, was not a matter reserved in the management rights provision of the 1981-82 collective bargaining agreement.

(4) The Union did not agree to transfers of employees during this period. Any verbal agreement was subject to written confirmation, and Respondent transferred the employees after it received a letter indicating that the Union had not agreed to the transfers.

4. Elimination of Swamping Trucks.

Respondent does not dispute that in the 1982 harvest it stopped using its own swamping trucks, nor that this affected the hours worked for its swampers. Employees Erasmo Espinoza and Manual Ayala testified that they worked as swampers for Respondent, and that in 1980 and 1981 they used Respondent's trucks. In 1982 they did not drive the trucks because Respondent brought in outside trucks and did not use its own trucks (RT XX:16-19; XXIV:37-38). The employees

testified that their hours were shortened because they no longer drove the trucks early in the morning to pick up the harvest boxes and place them in the fields (RT XX:18-19; XXIV:38).

Mr. Espinoza testified that he was a member of the Ranch committee and that he attended the negotiation sessions. He testified that Respondent did not negotiate with the Union about elimination of the swamping trucks (RT XX:19). Ms. Deborah Miller testified that Respondent did not notify or bargain with the Union about changing the swamping operation (RT XXX:149).

Mr. Johnston testified that the reason Respondent eliminated swamping trucks in 1982 was because of insurance and financial problems, including the bad driving record of some of the swampers:

> "A. In, I believe it was July of '81, I sent a list of all the employees on our swamper list to our insurance broker. He ran the [driving] records through some private company and I also asked him to send me a latter indicating what constitutes a bad driving record. Set down some guidelines as to what constitutes a bad driving record according to the insurance company rules.
>
> ...
>
> Because of the problems we had with blown engines and insurance problems in '81, we chose not to use those swamper trucks and they were taken back by the leasing company."
>
> (RT XXXV:20, 22)

Respondent did not call anyone from the insurance company to support Mr. Johnston's testimony, and did not introduce any letters, invoices or other documentary evidence to show that Respondent was having insurance problems. Respondent did introduce a letter from an insurance agent, dated July 29, 1981 to Mr. Johnston (RX:25). That letter, however, simply set out guidelines for good drivers:

> "Per our telephone conversation we have prepared the guidelines pertaining to acceptable Motor Vehicle Records for [grape truck drivers and swampers]. Only drivers meeting the following specifications should be permitted to operate the trucks;
>
> [followed by guidelines such as not more than two moving violations during the past three years, and others]." (RX:25)

There is nothing in the letter that would indicate that swampers for Respondent did not meet those criteria, or that Respondent had insurance problems or other problems with its trucks.

Mr. Johnston testified that in 1981 he notified the Union that he was instituting a driving policy for swampers in accordance with the letter from the insurance company (RT XXXV:114-115). However, that notice was not in relation to the later decision in 1982 to discontinue swamping trucks. As noted, Mr. Espinoza and Ms. Miller testified that they did not receive any notification in 1982.

Based on the above testimony and evidence, I find that in 1982 Respondent discontinued use of its own swamping trucks, and that this caused loss of some work for Respondent's regular swampers. I further find that Respondent did not notify the Union about the discontinuance of these trucks. In connection with Respondent's claim that it had to discontinue the trucks because of insurance problems, I find that Respondent did not offer any evidence to support Mr. Johns-ton's assertion that the trucks were discontinued due to insurance and mechanical problems.

5. Bargaining Directly with Employees

There is no real dispute as to the facts concerning the allegation that Respondent bargained directly with employees. However, the General Counsel alleges that the facts amount to bargaining with employees, while Respondent asserts that the incident consisted of a proper attempt to settle a grievance within the collective bargaining agreement.

In October 1982, near the end of the harvest, Mr. Caravantes and Mr. Johnston became concerned that the swampers were conducting a slowdown of work, because the trucks were not being loaded by 5:30 p.m. (RT XLVI:133). Mr. Caravantes felt that the swampers were concerned about the amount of hours they were working. Mr. Caravantes testified that twice he spoke in the fields with Mr. Erasmo Espinoza, a swamper who was a Union steward and a member of the negotiating committee that was bargaining over a new contract (RT XLVI:

131-132, 134-135). At the meetings Mr. Espinoza complained to Mr. Caravantes about the use by Respondent of an extra swamping truck (called a joker truck, with no set crew assignment). Mr. Caravantes and Mr. Espinoza reached an agreement, after Mr. Espinoza consulted with the other swampers, that the swampers would be guaranteed a ten-hour work day, and the trucks would be loaded by 5:30 p.m. (RT XLVI:135-136).

Mr. Caravantes testified that he was pursuing this matter as a grievance under the contract:

"Q. Mr. Caravantes, you were involved in negotiations at this time period, weren't you?

A. Yes.

Q. Why didn't you take this problem to the table?

A. It's a grievance. It's a complaint about working conditions in the field, and the first step in the grievance procedure mandates that you resolve it in the field if you can."

(RT XLVI:135-136)[34]

Mr. Caravantes testified that with the harvest period almost over, he needed to resolve the matter quickly and that

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[54] Respondent's position on this issue is that it was pursuing the matter as a grievance. Respondent does not argue that, because Mr. Espinoza was on the negotiating committee, the discussion in the fields constituted part of the authorized negotiating process. (See Post-Hearing Brief for Respondent, pp. 41-42). In this regard, I note that Union representative Juan Cervantes testified that individual members of the Ranch Committee did not have authority to conduct negotiations on their own (RT XLVI1:106-197). MS. Miller testified that she was not notified about the 13-hour workday agreement, and that Respondent did not bargain about the matter(RT XXX:149).

pursuing it as a grievance was the best method to achieve results (RT XLVI:136).

Mr. Espinoza and two other swampers testified about the incident. (See RT XX:20-25, 71-74; XXIV:40-42). Mr. Espinoza testified that the meetings in the field were initiated by Mr. Johnston and Mr. Cervantes (RT XX:22).

I credit the testimony of Mr. Caravantes that he believed he was pursuing the matter under the grievance provision of the 1981-82 collective bargaining agreement. The grievance provision states that "All disputes between the Company and the Union arising out of the interpretation or application of this Agreement shall be subject to the provisions of this Article" (GCX:52, Article 5). The first step (Step 1) for a grievance is stated as follows:

> "Step 1. Any grievance shall be immediately taken up by the Supervisor involved and the Union steward. They shall use their best efforts to resolve the grievance within one (1) workday."
>
> (GCX:52, Article 5, Section 2).

If Step 1 is not successful, Step 2 states that:

> "[T]he aggrieved party shall file the grievance in writing with a designated representative of the other party."
>
> (GCX:52, Article 5, Section 2)

The language of the grievance article implies that either the Union or Respondent could file a grievance.[35] I credit the testimony of Mr. Espinoza that the meetings were initiated by Mr. Caravantes and Mr. Johnston. Nonetheless, I find that Mr. Caravantes acted in good faith in dealing with Mr. Espinoza (the Union steward for the swampers), and that the language of Step 1 could be construed to support his actions. Mr. Espinoza denied that the swampers were engaged in a slowdown, but whether or not there was a slowdown I credit Mr. Caravantes' testimony that the trucks were not. being loaded on time, and that this affected Respondent's operations. With such a short time left in the harvest, and considering that this was a localized issue in which both the employees and Respondent had complaints, I find that Mr. Caravantes reasonably pursued the matter directly as a grievance.

The Step 1 language provides that the "Supervisor involved" should take up the matter with the Union steward. Although Mr. Caravantes may not have been the "Supervisor involved," on the particular facts of this incident I find that his actions in meeting with Mr. Espinoza were appropriate within the grievance provision. First, I find that Mr. Caravantes' presence was not overbearing for Mr. Espinoza. Mr. Espinoza was not only the Union steward, but had been a

[35]See, e.g., Section 7: "Grievances dropped by either party prior to an arbitration hearing shall be considered as withdrawn without prejudice to either party's position en a similar matter in the future" (GCX:52, Article 5, Section 7).

chief steward for three years and a member of the Ranch Committee for three years (RT XX:19). Further, he had attended all the negotiations between Respondent and the Union in 1982, at which Mr. Caravantes and Mr. Johnston were present (RT XX:19). I also find that since the concern of Respondent was that all the swamping trucks were not being brought to the storage facilities on time, it is not clear who the "Supervisor involved" would be. The situation is not the same as with a harvest or pruning crew where the crew foreman would be present; Because the delivery of the loaded boxes was part of the business operation with which Mr. Johnston and Mr. Caravantes were involved, I find that it was appropriate for them to deal with the situation directly.

In sum, I find that in October 1982 Mr. Caravantes and Mr. Johnston met in the fields with Mr. Espinoza, the Union steward for the swampers. At this meeting Mr. Caravantes and Mr. Espinoza reached agreement on complaints by the swampers (that Respondent was using an extra truck and that the swampers (that Respondent was using an extra truck and that the swampers were not getting their proper hours) and by Respondent (that the trucks were not being loaded on time). Respondent guaranteed the swampers a ten-hour work day, and the swampers agreed to load the trucks on time. I further find, for the reasons stated above, that the meeting in the fields was properly within the grievance provision of the 1981-82 collective bargaining agreement.

6. Suspension of Seven Members of Crew 64.

On August 9, 1982 three members of Crew 64, Lydia Rodriguez, Pascual Magallanes, and Roberto Holguin were suspended for three days (GCX:91). On August 20, 1982 the same three persons were suspended for five days (GCX:92). On that same day four other members of Craw 64, Hermenegildo Melendez, Antonia Kernandez, Esperanza Magallanes, and Teresa Realsola (also spelled Reazola), were suspended for three days (RX:54). The General Counsel alleges that these individuals were suspended because of their Union activities, and also, in some cases because they had availed themselves of the ALRB's processes in litigation against Respondent. Respondent asserts that the employees were properly suspended because of poor work, in accordance with Respondent's regular disciplinary procedures.

There is no dispute as to the Union activities of the seven employees. It was stipulated concerning Antonio Hernandez, Teresa Realsola, Esperanza Magallanes, Pascual Magallanes, and Roberto Holguin:

> "[T]hat these individuals engaged in numerous instances of activity on behalf of the U.F.W. in 1982 and that they were supporters of the U.F.W. ... [That they] were among the first individuals to wear U.F.W. buttons in the harvest of 1982; they were also the first individuals to use bumper stickers that read "queramos un contrato." ("We want a contract.") ... They placed those stickers on their vehicles and on cardboard placards that were hung

on the packing tables; that when the harvest began they would frequently speak about the U.F.W., specifically about negotiations, the status of negotiations; that all these individuals attended one negotiation session in early August [1982], negotiations being between the U.F.W. and Tex-Cal; that all these individuals attended a meeting in July with George Johnston and Conrado Sosa in which the subjects of bathrooms and water were discussed; and that Conrado Sosa, their foreman, and George Johnston had full knowledge of all these activities."

(RT XXII I:97-98)

Concerning the other two employees, Mr. Melendez and Ms. Rodriguez, there is undisputed evidence as to their extensive Union activities. Mr. Melendez was the Union steward for Crew 64 (RT XVII:67). He talked to the members of the crew about Union meetings, and passed out Union handbills and bumper stickers in the fields during breaks and lunch. The crew foreman was present during some of this activity (RT XVII:68). Mr. Melendez attended all the bargaining sessions between the Union and Respondent, and he was present at the picket lines in June and August 1981 (RT XVII:68-69). Mr. Melendez had conversations with his foreman about the Union (RT XVII:75). He also placed Union bumper stickers on the grape packing tables, and had discussions with his foreman and Mr. Johnston concerning that matter (RT XVII:81).

Ms. Rodriguez has been a member of the UFW for ten years, and wore Union buttons to work (RT XIII:56). She partici-

pated in the picket lines in June and August 1981 (RT XIII: 57). She talked with workers in her crew about the Union and about the picket lines, in the presence of her crew foreman (RT XIII:58). Ms. Rodriguez also attended some bargaining sessions (RT XIII:99).

The July meeting referred to in the stipulation was a meeting requested by Mr. Melendez, and attended by the entire crew (RT XVII:90). It took place on July 28th (RT XL:5). The crew spoke with Mr. Johnston and crew foreman Conrado Sosa at the meeting to complain that water was not readily available for the crew, and that bathroom facilities were sometimes inadequate (RT XVII:91). Mr. Melendez spoke at the meeting (RT XVII:92-93). Ms. Rodriguez also spoke at the meeting (RT XIII:78). Besides water and bathrooms, the crew members also discussed hiring and seniority (RT XIII:78; XL:7).

In addition to the July 28th meeting, there was a grievance meeting on August 19, 1982, attended by a number of Crew 64 members, including Ms. Rodriguez, Mr. Magallanes, Ms. Magallanes, and Mr. Holguin (RT XXII:52). Mr. Johnston and Mr. Caravantes were present for Respondent. Ms. Rodriguez spoke at that meeting (RT XIII:101; XXII:53).

Members of Crew 64 also attended a bargaining session between the Union and Respondent in August 1982, a week after the suspensions of August 9th. Ms. Rodriguez, Mr. Magallanes, Mr. Holguin, and Ms. Magallanes were present, and wore Union buttons (RT XI11:99-100).

Concerning ALRB activities, it is undisputed that Mr. Melendez filed charges against Respondent in 1980, and was named as an alleged discriminatee and testified at the hearing on those charges (GCX:98; RT XVII:89). It is also undisputed that Ms. Rodriguez and Ms. Realsola were named by the General Counsel as alleged discriminatees in the 1980 charges, and that Ms. Rodriguez testified at the hearing. The 1980 charges are reported at Tex-Cal Land Management, Inc., 8 ALRB No. 85. In the 1980 case, the Board affirmed the Administrative Law Officer's finding that Respondent discriminatorily discharged Crew 64 (in October 1980) because of the concerted activities of the crew in protesting working conditions (8 ALRB No. 85, p. 8). The Administrative Law Officer stated in that case that he based his findings of a discriminatory discharge for Crew 64 on the testimony of Ms. Rodriguez (8 ALRB No. 85, Decision of Administrative Law Officer, pp. 42-46).[36] The Board's order in that case ordered Respondent to make whole the members of Crew 64, including Mr. Melendez, Ms. Rodriguez, and Ms. Realsola (8 ALRB No. 85, p. 10).

There is no dispute as to Respondent's formal procedures

[36]The Administrative Law Officer stated:

> "My findings of fact regarding Crew #64 and these incidents are based on Lydia Rodriguez' uncontroverted testimony as Respondent never presented any evidence in respect to this allegation. Rodriguez was an impressive witness who testified in a straightforward manner and had a good memory for details."
> (8 ALRB No, 85, Decision of Administrative Law Officer, pp. 44-45, n. 28).

for suspending employees. If an employee's work is substandard, Respondent first issues an "oral warning" (commemorated in writing). If a written notice is subsequently given (second total notice), the employee is suspended for three days. If a second written notice (third total notice) is given, the employee is suspended for five days.[37] When crew foreman and supervisors feel that work is substandard and requires a warning notice, Mr. Johnston is called in and is present when the warning notices are issued (RT XL:49).

There is also no dispute that these formal procedures were followed in connection with the suspension of the seven members of Crew 64. A notice of an oral warning was given Ms. Rodriguez, Mr. Magallanes, and Mr. Holguin on August 5, 1982 (RX:36), a first written (second total) notice and three-day suspension on August 9th (GCX:91), and a second written notice (third total) and five-day suspension on August 20th (GCX:92). Similarly, an oral warning notice was given to Mr. Melendez, Ms. Magallanes, Ms. Realsola, and Ms. Hernandez on August 9, 1982, and a written notice (second total) and three-day suspension on August 20th (RT XL:55-56, 61, 65; RX:39, 54).

The General Counsel alleges that Respondent singled out these individuals for suspension because of their Union activities. Respondent asserts that they were suspended in the normal course of Respondent's business practices for work of a type which normally merited suspension.

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[37]At the hearing (and at Respondent's premises) warning notices are sometimes referred to as "tickets."

In considering this issue, I first find from Respondent's supervisors that there was no clear standard of work which formed a dividing line between a suggestion from the foreman or supervisor that the employee do better, and the calling in of Mr. Johnston for issuance of a warning notice.

Mr. Conrado Sosa, foreman of Crew 64, testified:

"Q. What's the discipline on the first written [second total warning notice]?

A. Three days.

Q. Doesn't it depend when you get the three days, doesn't that depend on the severity of the violation?

A. Well, there's a rule, a law, to give us in writing. And when, one does that, it means that they have done something that is incorrect and they want them to understand.

• • •

Q. Okay. It doesn't make any difference whether the employee has been working there one day or the employee has been working there five years, is that correct?

A. No. Because the law is for everybody.

Q. If you were to check a box and find a few water-berries [poor quality grapes] in there, would that employee be automatically get a warning -- strike that -- a word [sic: written] violation?

A. No, sir. That only when it's a bigger violation than a small one.

Q. Okay. Who makes that determination?

A. I don't know. They give us the rules on paper. I don't know who made them up.

Q. Have you ever discussed with Mr. Johnston when an employee is to get a violation for picking waterberries in the box?

A. No. When those tickets are given out to the people are after the [U.S. Department of Agriculture] inspector finds that the grapes are very bad.

Q. Okay. So, a warning ticket would be given if the inspector finds that the grapes are very dirty and full of waterberries. That's when the warning is given?

A. No. Just if the inspector isn' there, then one has to do it himself.

Q. What would cause you to issue a warning to a worker for picking dirty grapes?

• • •

A. One goes around table after table all day long, telling them to clean the grapes properly, to do a good job. Sometimes they don't pay attention and something has to be done."

(RT XLII:24-26)

Mr. Joe Medina, Jr., a field supervisor during the harvest, and that his job included checking the quality of grapes. He testified concerning when the quality of work required a warning notice:

"Q. If you find something wrong in [a box of grapes] what do you do?

A. Well, I normally get the number off that box and normally go right to that table, you know, and I also inform the crew boss that, you know, it's just something more that he has to take care of which is what he does anyway. But specifically if I see a certain amount of boxes that I don't like the way they look, I'll have him take care of them or go over them or things like that" (RT XLIII:46-47).

"Q. What do you mean when you say [there are times] you had to call George [Johnston, to give a warning notice]?

A. Well, you know the box -- Maybe they weren't cleaning right or they were really picking, like on our seedless, maybe picking real green bunches. No sugar contents in them or something like that, you know. I've had to call him for things like that, you know.

Q. You inspect these eight to ten crews every day, right?

A. Right.

Q. And you come across some group that has waterberries or mildew or that isn't packing right. Maybe they have too much space in their box. If George [Johnston] isn't with you, what do you do?

A. Well, if I go into a crew, you know, and it's really not that bad but still they have to clean it up a little bit, then I normally just tell them myself. I'll call them out or I'll get the crew boss there and I'll call him out and I'll let him know. I'll say just watch this

a little closer or something like that. But if it gets to the extent where it's really bad, where I feel it's a problem, then I'll tell George." (RT XLIII:73-74)

Before considering the specific incidents in August 1982, I note that Respondent introduced all the warning notices Mr. Johnston gave its employees for poor grape quality in the 1981 and 1982 harvests (RX:54). From these, I find it is clear that suspension of employees for poor quality grape-packing was a very rare occurrence. Mr. Johnston testified that in the 1981 and 1932 harvests he issued a total of 24 warning notices for poor quality grape-packing. Of these, Respondent's Exhibit 54, which contains all 24 notices, shows that 21 of the notices were "oral" warnings. The only "written" notices causing suspension of any employees in the 1931 and 1932 harvests were the three notices in August 1982 resulting in the suspension of the seven members of Crew 54. Further, in the 1982 harvest, which began July 12th, there was only one warning notice given at all (an oral warning) prior to the notice in August to the Crew 64 members.

I also find that prior to August 1982 Respondent had not been dissatisfied with the quality of work by the members of Crew 64. Mr. Medina testified:

"Q. Prior to the time that this incident occurred [the August, 1982 warning notices], had you observed any problem with Crew 64?

A. Well, not that I can recall. Not that bad. Normally I'd run into something that was hardly nothing but I'd

just tell them to watch it, watch it, you know. You go down the tables and you see water berries, watch it, you know. But if you open the box it's not in the box. You're still letting them know anyway. No, not that I can remember."

(RT XLIII:74)[38]

Concerning the August 1982 suspensions, Mr. Medina testified that in August 1982 he notified Mr. Johnston that he felt disciplinary action might be needed for grapes being packed at two tables in Crew 64:

"A. ... I went table by table and I pointed out a few tables that day that weren't right.

... [The boxes] were packed bad, you know. They had a lot of ' holes in their packing. And then their quality was bad. There was a lot of water berries. There was a lot of mildew in the box. There was just a lot of decay. It was really a dirty box. It was bad."

(RT XLIII:47-48)

Mr. Medina testified that mildew was a problem on other tables

"A. Yeah, we had a mildew problem just about all that ranch there [ranch 81].

Q. When you looked through all of these boxes, did everybody have some sort of a mildew problem?

A. No, not really. Not everybody. Not that time I went through there. There was a few tables that were

[38]The only exception was one oral warning issued to Mr. Melendez during the"1981 harvest (RX:54).

really bad.

Q. Was there some mildew at everybody's table?

A. Not all the tables. But, you know, there was some on some tables and I just told them to throw it out or leave it alone, you know.

(RT XLIII:51)

Mr. Medina testified that he called Mr. Johnston in, and the crew foreman, Mr. Conrado Sosa, and that Mr. Johnston issued the warning notices.

Mr. Johnston testified that on August 5th he issued an oral warning notice to Ms. Rodriguez, Mr. Magallanes, and Mr. Holguin, because Mr. Medina showed him a box they had packed that had mildew, water berries, and rotten grapes (RT XL:49-50). He further testified that on August 9th U.S. Department of Agriculture Inspector Mike Mendoza told him that two tables in Crew 64 had poor quality grapes which Mr. Mendoza required the workers to repack (RT XL:53). Mr. Johnston inspected the grapes at all the Crew 64 tables that day and found three table with grapes that would not have passed U.S.D.A. inspection. He testified: "[A]ccording to ray warning procedure, I wrote up two of the tables, that was their first warning, would have been oral warnings [one of the tables was the one at which Mr. Melendez, Ms. Magallanas, Ms. Realsola, and Ms. Hernandez were packing], and the third table was the table [with Ms. Rodriguez, Mr. Magallanes, and Mr. Holguin] we referred to that had the warning on 8/5. Theirs was a second warning. They were sent home for three days'" (RT XL:55).

Mr. Johnston testified that on August 20th an inspector showed him three boxes of grapes which needed to be repacked because of inadequate sugar content in the grapes. He testified that he then wrote the warning notices to two of the tables, Ms. Rodriguez" table, which was their third warning and for which they received a five-day suspension, and Mr. Melendez[1] table, which was their second warning and for which they were suspended for three days (RT XL:60-62). Mr. Johns-ton was asked why the third table was not given a warning notice, and he testified "[T]hat table then was not issued a warning because it had new people in it" (RT XL:61). He elaborated: "[S]ince three out of the four people in that table were new that day, I didn't see it to be fair to give them a warning. I just told them, they knew they were repacking, I told them to be a little more careful" (RT XL:65).

Respondent called Mr. Harold Gibson, a U.S. Department of Agriculture inspector, to testify. Mr. Gibson testified that on two occasions in August 1982 he found grapes in a crew (clearly Crew 64 given the context of his testimony) which did not pass inspection. On those occasions he accompanied Mr. Johnston to the tables, and Mr. Johnston inspected the grapes (RT XLI:2-6).

On cross-examination, Mr. Gibson testified that he had been to the same ranch on each day of the harvest in 1982 prior to the August incidents, and that on several occasions he had found grapes which did not pass inspection. On those instances he told Mr. Johnston and Mr. Medina (RT XLI:8-9).

The harvest began approximately July 12th, and the compilation of. warning notices for the 1982 harvest (RX:54) shows that only one notice, an oral warning notice issued to one employee for poor packing, was issued to any employees prior to the notices involving Ms. Rodriguez' and Mr. Melendez' tables.

Mr. Conrado Sosa, foreman of Crew 64, testified. Mr. Sosa testified that in August 1982 a number of tables in his crew had waterberries in the boxes, but that only the two tables (Ms. Rodriguez' and Mr. Melendez') were given warning notices :

"A. Well, there weren't enough boxes for us to give warnings to everyone. Just one or two.

Q. Okay. So your answer is that they [the tables that packed those boxes] did not recieve a warning, correct?

A. No because I couldn't give everyone one. If I did, I'd be left without people.

• • •

Q. Mr. Sosa, isn't it true that these occurrences, when the swampers would get their hands wet because of waterberres [in the packed boxes], this happened throughout the entire month of August, didn't it?

A. Naturally. In the Thompson grapes." (RT XLII:29-30)

Mr. Sosa testified that on August 20th, he saw several of the tables with dirty grapes and waterberries. Ms. Rodriguez' table and Mr. Melendez' table, along with another

table, had more dirty grapes than the others (RT XLII:48-56). Mr. Sosa testified that on August 9th he had seen poor grapes at all the tables and had told the workers to be more careful (RT XLII:49, 55). Mr. Sosa further testified that on August 20th, the day Ms. Rodriguez' table received the five-day suspension and Mr. Melendez' table received the three-day suspension, Mr. Sosa saw the inspector tell those tables to repack the grapes. Mr. Sosa testified that at that time their work was not such that he intended to give those tables a warning notice (RT XLII:59). Mr. Johnston then came by and told Mr. Sosa that Ms. Rodriguez' table and Mr. Melendez' table would be given warning notices (RT XLII:61). The third table that had to repack grapes was not given a warning notice (RT XLII:55). Mr. Sosa testified that Mr. Johnston wrote out the warning notices for Ms. Rodriguez' and Mr. Melendez' tables, and told Mr. Sosa to sign them. Mr. Sosa signed them without reading them, because Mr. Johnston told him to sign them (RT XLII:62).

In evaluating Mr. Sosa's testimony, I note the testimony of Mr. Medina (concerning the August 5th initial warning notice):

"Q. Who was the foreman?

A. Conrado Sosa.

Q. Was he there?

A. Yeah, he was there.

Q. Did you show him the problem?

A. Yeah, he was there. He saw the problem. I normally

let the crew boss know when I've found a problem.

Q. Is he a good foreman?

A. Yeah, he's real good."

(RT XLIII:71) .

Ms. Rodriguez and Mr. Melendez testified that it appeared that Mr. Johnston was picking their groups out, because he and Mr. Medina opened already sealed boxes of grapes which had been checked by Mr. Sosa (RT XI11:88-90; XVII:96).

Based on Respondent's own testimony and evidence, I find:

(1) On August 9, 1982 Respondent suspended Lydia Rodriguez, Pascual Magallanes, and Roberto Holguin for three days for packing poor quality grapes.

(2) On August 20, 1982, Respondent suspended Lydia Rodriguez, Pascual Magallanes, and Roberto Holguin for five days for packing poor quality grapes, and Hermenegildo Melendez, Esperanza Magallanes, Antonia Hernandez, and Teresa Realsola (Reazola) for three days.

(3) The seven individuals named in (1) and (2) above were active Union supporters, and their Union activities were known to Respondent.

(4) On July 28, 1982, the seven individuals attended a meeting of their craw with Mr. Johnston, initiated by Union steward Hermenegildo Melendez, to complain about working conditions.

(5) On August 19, 1982, Ms. Rodriguez, Mr. Magallanes, Ms. Magallanes, and Mr. Holguin attended a Union grievance meeting with Mr. Johnston.

(6) The seven individuals suspended by Mr. Johnston received more severe treatment than that usually received by workers for packing poor quality grapes. I base this finding on:

(a) The standards for issuing warning notices were vague and subjective, as testified to by Mr. Medina and Mr. Sosa.

(b) In the entire 1981 and 1982 harvests no other employees were suspended by Mr. Johnston for packing poor quality grapes.

(c) The agricultural inspector made the seven individuals repack their grapes, and this was relied upon .by Mr. Johnston as a reason for giving the suspension warning notices. However the same inspector had previously informed Mr. Johnston of other instances of poor quality grapes and no warning notices had been given.

(d) Another table packed equally poor quality grapes on August 20th and was told to repack the grapes by the inspector, but no warning notice was given to that table.

(e) Crew foreman Conrado Sosa indicated that though the work quality on August 20th was poor, it did not in his opinion justify a warning notice.

(f) The crew foreman and Mr. Medina testified that throughout the harvest there were problems at other tables with mildew and waterberries, but the records of warning notices show that only one other warning notice (an

oral warning) was issued to any employee in the 1982 harvest prior to the warning notices to the seven individuals.

(g) There was no prior history of poor work for the seven invididuals from the beginning of the 1982 harvest in July until the first warning notice on August 5th.

7. Conversion of Table Grape Vineyards to Raisins.

The 1981-82 collective bargaining agreement contained a provision allowing Respondent to subcontract out harvest work for its raisin crops (GCX:52, Article 17). It: is undisputed that in 1931 Respondent harvested a total of 1745 acres of table grapes, and 163 acres .of raisins. The 1981 collective bargaining agreement was signed in October 1981. In 1982 it is undisputed that Respondent converted almost a thousand acres of its table grapes to raisins, harvesting a total of 768 acres of table grapes and 1097 acres of raisins. Respondent's regular crews did not work on the raisin harvest. It is further undisputed that Respondent's decision to convert these table grapes to raisins was a unilateral decision, made without notice to or bargaining with the Union.

The parties are in disagreement as to whether Respondent's admittedly unilateral decision to convert to raisins affected the hours of work for its regular crew employees. Respondent asserts that no harvest work was lost, or that any lost work was de minimis. The General Counsel alleges the regular crews did lose harvest work.

The payroll evidence shows that in fact the regular crews did less harvest work in 1982 than in 1981, and by an amount

which I find not to be de minimis. An analysis of Respondent's Exhibit 45 reveals that the regular crews' harvest work was reduced by 12% in 1982:

Crew	1981 Hours	1982 Hours
51	20,265	10,246
52	18,698	17,954
54	18,882	20,053
55	19,745	19,630
56	22,888	19,627
57	19,346	19,190
58	18,029	15,162
59	14,353	13,865
61	13,822	9,056
64	19,355	18,834
TOTAL HOURS:	185,383	163,617 (-12%)

Respondent did not produce evidence showing other reasons why the regular harvest work in 1982 would have been reduced, and I do not find a 12% reduction of work to be de minimus.

Accordingly, I find that in 1982 Respondent, without notice to or bargaining with the Union, converted approximately 1000 acres of table grapes to raisins, that Respondent's regular crews did not work on harvesting the raisins, and that Respondent's regular crews lost work as a result of Respondent's unilateral action.

The General Counsel introduced testimony that Respondent may have decided to convert to raisins as early as March

1982, and Respondent introduced testimony that the decision was made as harvest time approached in the summer of 1982. Respondent's witnesses testified that 1982 was a bumper crop year for table grapes, which left a lot of table grapes which could be held on the vines for raisins. Respondent introduced testimony from Mr. Bruce Obbink that 1982 was generally a banner year for table grapes in Respondent's area of California (RT XLIII:82-89). I credit Respondent's testimony that 1982 was generally a banner year for table grapes, and that the decision to convert to raisins was made as the harvest approached. However, I also note that Respondent did not introduce any business records or other evidence to show specifically why approximately 1000 acres needed to be converted, and why the conversion had to be done to an extent which reduced table grape harvest work for its regular crews by 12%.

B. Conclusions of Law

1. Section 1153(e) of the Act.

(a) Legal Standards.

Most of the allegations concerning the 1982 harvest involve unilateral changes by Respondent. The Board's cases are clear as to the responsibility of an employer in making changes which affect the working conditions of employees.

The Board's cases hold that an employer must give notice and bargain with a union about changes in wages, hours of

work, hiring, subcontracting, seniority, and changes in work assignments. See, e.g., Adam Dairy, 4 ALRB No. 24; Montebello Rose Co., Inc., 6 ALRB No. 64; AS-H-NE FARMS, 6 ALRB No. 9; Signal Produce Co., 6 ALRB No. 47; Sunnyside Nurseries, Inc., 6 ALRB No. 52; Ruline Nursery, 8 ALRB No. 105; Mario Saikhon, Inc., 8 ALRB No. 88.

As has already been quoted previously, in Tex-Cal Land Management, Inc., 8 ALRB No. 85, the Board held that where there is an established past practice under a contract, the requirement to bargain about changes in that practice continues after the contract expires. In that case the Board also reiterated the importance of the requirement to bargain:

> "Where a term or condition of employment is established by past practice and/or contractural provision, a unilateral change constitutes 'a renunciation of the most basic of collective bargaining principles, the acceptance and implementation of the bargain reached during negotiations.' Even after expiration of the contract, an employer's unilateral change of any existing working condition without notifying and bargaining with the certified bargaining representative constitutes a per se violation of section 1153(e) and (a) of the Act. Where the unilateral change relates to a mandatory subject of bargaining, such as subcontracting and hiring, a prima facie violation of section 1153(e) and (a) is established." (8 ALRB No. 85, citations omitted)

(b) Unilateral Changes; Hiring in June and August 1982; Elimination of Swamping Trucks; Transfer of Employees.

In each of these instances I find that Respondent violated Section 1153 (e) and (a) of the Act. I have found that on June 14, 1982 Respondent hired 37 workers into Crew 61. The 1981-82 contract called for notice to the Union about hiring, and Respondent did not give the Union notice. Respondent asserted as a defense that the hired workers were all family hires, which by previous practices were exempt from the notice requirement. However, I have found that Respondent did not produce evidence to support its assertion that the 37 new hires were family relatives.

I have found that from August 17 to August 25, 1982 Respondent hired over 100 employees. Respondent did not give the Union proper notice under the established procedures. Its notice to the Union did not give the Union two days' notice, and did not specify the estimated amount of new hires. Further, I have found that Respondent's notice only covered approximately 30 of the 100 employees. I have also found that Respondent deviated from its first-come, first-served hiring policy. Respondent asserted as a defense that the hires were all family hires and thus the Union did not need to be noticed, but I have found that Respondent offered no evidence to support this assertion as to the vast majority of the workers hired.

I have found that in July 1982 Respondent unilaterally transferred approximately 80 employees to different crews, and that this transfer affected the seniority rights of employees. Respondent asserted as a defense that the transfers were reserved to Respondent under the management rights provision of the 1981-82 contract, but I have found that this was not the case and that Respondent conceded it was required to notice the Union and bargain with it. Repondent's primary defense was its assertion that the Union in fact agreed to the transfers, but I have found that any such alleged agreement was subject to written confirmation by the Union, and that the Union sent a letter indicating that it had not agreed to the transfers but Respondent made the transfers anyway.

I have found that Respondent unilaterally discontinued use of its own swamping trucks in the 1982 harvest, and that this discontinuance reduced the hours of work for Respondent's swampers. Respondent asserted as a defense that it needed to cancel its trucks due to insurance problems, but offered no documentary evidence or testimony to support the assertion of Mr. Johnston that this was the case.

In the case of transfers and elimination of swamping trucks, Respondent thus made unilateral decisions which directly affected seniority rights and/or working hours of employees. Under the cases cited above, Respondent had a duty to bargain with the Union about these changes and it did not do so.

In the case of hiring, the Board in Tex-Cal Land Management, Inc., 8 ALRB No. 85, held:

> "Respondent fails to recognize that a unilateral change of an employer's hiring or subcontracting practice affects the terms and conditions of employment of the bargaining unit employees, regardless of whether bargaining unit members were actually displaced or suffered loss of employment or diminished income as a result of the change."

(8 ALRB No. 85, p. 7)

In sum, I find and conclude that during the 1982 harvest Respondent unilaterally instituted changes in its hiring, transfer, and swamping practices, as described above, which changes affected the terms and conditions of employment of its regular employees, and that by failing to bargain with the Union about these unilateral changes Respondent violated Section 1153 (e) and (a) of the Act.

(c) Bargaining Directly with Employee's.

The Board has held that the duty to bargain with the employees' collective bargaining representative is exclusive, and carries with it "the negative duty to treat with no other." AS-H-NE Farms, 6 ALRB No. 9, p. 18 (citations omitted). Further, in AS-H-NE Farms, the Board held that where the employer bargains directly with employees, the Act is violated regardless of who initiated the meeting.

In this case there is no question that Mr. Caravantes met in the fields with Union steward Espinoza, and that they

reached an agreement concerning the hours for swampers. How-aver, Respondent asserted as a defense that the agreement was pursuant to the contractual grievance procedures. I have found that Respondent's defense was valid. The meeting was in response to a short-term, localized situation, and Respondent substantially followed the specified procedures in the grievance provision.

For the above reasons, I find that the General Counsel has not proven a violation of Section 1153(e) of the Act in connection with the meeting between Mr. Caravantes and Mr. Espinoza.

(d) Conversion of Vineyards to Raisins.

The conversion of vineyards to raisins was a unilateral decision by Respondent, and the general legal standards concerning unilateral changes have been set forth above. The cases hold that generally an employer must bargain about a change which affects the hours of work of its employees. See, e.g., Highland Ranch and San Clemente Ranch, Ltd., 5 ALRB No. 54; Nish Noroian Farms, 8 ALRB No. 25; San Clemente Ranch, Ltd., 8 ALRB No. 29; Ukegawa Brothers, Inc., 8 ALRB No. 90; Ruline Nursery, 8 ALRB No. 105.[39]

[39]There are also a number of cases where the Board found no violation of the Act because a management decision concerning changes in farming operations did not affect the hours of work for its employees. See, e.g., Lu-Ette Farms, Inc., 8 ALRB No. 91; Gourmet Harvesting and Packing, Inc., 8 ALRB No. 67; Cattle Valley Farms, 8 ALRB No. 59.

Respondent asserted as a defense that 1982 was a banner year for table grapes and thus there were good business reasons for a management decision to convert to raisins. However, Respondent made no showing that circumstances required, without time to bargain, conversion to raisins of so many acres that regular crews lost work. Cf. Joe Maggio, et al., 8 ALRB No. 72. All that Respondent showed was that 1982 was a very good crop year for table grapes, and that conversion of some acreage to raisins would be good business. Respondent made no specific showing that business reasons forced a conversion which had to result in 12% lass hours for its regular employees.

In O.P. Murphy Produce Co., Inc., the Board adopted a balancing approach (used by the Supreme Court in First National Maintenance Corp. v NLRB (1931) 452 U.S. 666), for determining when an employer must bargain about management decisions which affect the employment relationship. Applying the balancing approach of O. P. Murphy, I find that Respondent did have an obligation to bargain with the Union over the conversion of vineyards to raisins. I have found that this decision resulted in a 12% loss of work for Respondent's regular employees. Balancing this interest of the employees against Respondent's, I find that there were no reasons on the record why Respondent needed to make such a decision secretly. I also find that Respondent has not shown any exigent circumstances requiring that the decision be made so quickly that no bargaining could have taken place. As de-

scribed above, I further find that Respondent has made no showing that the exact amount of acreage converted was necessary, or that the conversion needed to be made with a loss of work for the regular harvest crews. Absent a stronger showing of interest on the part of Respondent for making the decision unilaterally, I find that Respondent had an obligation to bargain with the Union about the effect on regular employees' work hours of the conversion of the vineyards to raisins.

In sum, I find and conclude that in the 1982 harvest Respondent converted approximately 1000 acres of table grapes to raisins, which conversion resulted in a loss of hours of work for Respondent's regular employees,, that the employees' need for bargaining outweighed the interest of Respondent in making the decision unilaterally, and that Respondent's failure to notify the Union or bargain about the conversion to raisins violated Section 1153 (e) and (a) of the Act.

2. Section 1153 (a) of the Act.

(a) Hiring of Workers in August 1932.

I have already found that the hiring of approximately 100 workers in the period August 17-25, 1982 was done in violation of Section 1153(e) of the Act, and therefore derivatively of Section 1153 (a). However, I find that the circumstances under which Respondent hired workers during this period amounted to an independent violation of Section 1153 (a) of the Act as well. In Nagata Brothers Farms, 5 ALRB Mo. 39, the Board held that "The test [for a violation of Section 1153 (a) of the Act] is whether the employer

engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act." (5 ALRB No. 39, p. 2. Citations omitted.) I find that here Respondent conducted the August hiring in a manner which could only embarrass the Union, and undercut the Union and those Union employees who notified prospective workers that Respondent would be hiring. This had the clear and reasonable tendency to undermine the employees' free and effective choice of a bargaining representative.

The facts concerning this hiring have been described in detail. Respondent failed to tell the Union how many people it intended to hire (an obligation under the contract). Then, when the Union, including several Union stewards at Respondent's farm, produced 200 people at the jailhouse, Respondent only hired five people. Respondent distributed random numbers to 30 more people in a way which increased the confusion at the scene, and violated the previous first-come, first-served practice. Respondent hired an additional 75 people over the week without notice to the Union, including hiring a whole crew in the fields at the same time it was only hiring five people at the jaiihouse. The sure total of this hiring practice was a near fiasco for the orderly hiring procedure which the Union rightfully could have envisioned, and which it encompassed in its actions in producing people at the jaiihouse. The Union put its prestige on the line when it notified people that work was available, and Respondent's actions clearly undercut the Union's efforts. The effect, in.

terms of the Nagata case, reasonably tended to interfere with the employees' right to freely choose a bargaining representative .

For the above reasons, I find that by manipulating the hiring of 100 workers in August 1982 in such a manner as to undercut the efforts of the Union and to undermine the Union's prestige, Respondent violated Section 1153 (a) of the Act.

3. Section 1153 (c) and (d) of the Act.

(a) Suspension of Seven Members of Crew 64.

The Board's standards for finding a violation of Section 1153(c) of the Act, as enunciated in Wright Line, Inc. 251 NLRB No. 150, Giumarra Vineyards, 8 ALRB No. 79, and Zurn Industries Inc. v NLRB (9th Cir. 1982) 680 F. 2d 683, have been set forth in Section VII(B)(2) of this Decision, supra, and are incorporated here by reference. Under these cases, if the General Counsel proves a prima facie case that Union activities were a motivating factor in Respondent's reduction of work for the regular crews, the burden shifts to Respondent to establish that the reduction would have taken place in any case, regardless of the employees' Union activities. Further, as set out in a series of cases, the actions alleged to violate Section 1153 (c) of the Act must be viewed within the context of the surrounding events and circumstances. See, e.g., Karahadian, 4 ALRB No. 69; George Lucas and Sons, 5 ALRB No. 62; S. Kuramura, 3 ALRB No. 49; Lawrence

Scarrone, 7 ALRB Mo. 13; O.P. Murphy & Sons, 7 ALRB No. 37; Bruce Church, Inc., 8 ALRB No. 81.

The General Counsel's prima facie case of a violation of the Act is very strong. The seven workers were among the leading Union supporters at Respondent's premises, and their Union activities were known to Respondent. Three of the workers had been in Crew 64 at the time Respondent discriminatorily discharged the crew in 1980 for concerted activities. When the 1982 harvest began in July, the seven workers were among the first to wear Union buttons, and discussed Union issues in the fields. On July 28th, the Union steward for the crew (one of the seven workers) called a meeting with Mr. Johnston at which the crew complained about working conditions. There had been no prior, history of poor work from the seven individuals in the 1982 harvest, but one week after the July 28th meeting Respondent began a series of warning notices to the seven workers which resulted in a total of 36 days suspension (three days each for four workers, eight days each for three workers). The last suspensions, on August 20th, came one day after several of the workers attended a grievance meeting with Mr. Johnston. I find that these circumstances make a strong showing of a prima facie case that Union activities were a motivating factor in Respondent's suspension of the seven individuals.

In connection with Section 1153 (d) of the Act, three of the individuals were alleged discriminatees in the Board's 1980 case involving Respondent. The Administrative Law Officer singled out the testimony of one of the three indi-

viduals as the basis for his finding that Respondent violated the Act in 1980 by discharging Crew 64. However, it is not possible to factor the exact degree to which the three individuals' ALRB activities motivated Respondent's action, as distinct from their Union activities in general. The hearing took place in May 1981. The ALO's decision was December 31, 1981. I do not find sufficient direct evidence to show that the ALRB activities were a specific motivating factor, and therefore I find that the General Counsel has not shown a prima facie case that Respondent violated Section 1153 (d) of the Act.

Having found a prima facie violation of Section 1153(c), the burden shifts to Respondent to establish that the employees would have been suspended anyway. Respondent asserts that this is the case, arguing that the employees' poor quality work would have resulted in a suspension under Respondent's regular disciplinary practices. However, I find that Respondent has clearly not proven its case in this regard.

As discussed in the findings of fact, I have found that the seven workers were given harsher treatment than would have been the case under Respondent's regular practices. In two years of harvests, 1981 and 1982, no other employees were suspended for packing poor quality grapes. Respondent's supervisors testified that other workers had poor quality grapes. In 1982, prior to the August warning notices to the seven individuals, only one person in the harvest had

received a warning notice, despite the testimony of Respondent's supervisors that problems with mildew and waterberries were found at a number of tables. On the same day the individuals were suspended, another crew with equally poor grapes was not given a warning notice, allegedly because the crew was new. Why Respondent would give such a break to untried employees while disciplining the maximum employees with a long history of acceptable work was unexplained. The USDA inspector testified that other instances of poor grapes were pointed out to Respondent, and the evidence shows that no warning notices were given. In sum, I find that Respondent's evidence and argument that the employees would in any case have been suspended is extremely weak. When considered next to the fact that immediately after a series of Union activities these seven employees were given suspensions when no other employees had received such treatment, I find that the discriminatory motivation for Respondent's actions is clear.

Accordingly, I find that the General Counsel has proven a prima facie case that the suspensions of Lydia Rodriguez, Pascual Magallanes, Roberto Holguin, Hermenegildo Melendez, Antonia Hernandez, Experanza Magallanes, and Teresa Realsola (Reazola) in August 1982 were motivated by the Union activities of those individuals, known to Respondent, and that Respondent has not shown that the individuals would have been suspended under normal circumstances. I conclude that by suspending the seven individuals because of their Union activi-

ties, Respondent violated Section -1153 (c) and (a) of the Act.

XII. SURFACE BARGAINING

A. Findings of Fact

The 1981-82 collective bargaining agreement (GCX:52) had an expiration data of June 6, 1982. On March 25, 1982 Union representative Ben Haddock sent a letter to Respondent's president, Randy Steele, requesting that bargaining begin on a new contract to follow the expiration of the 1981-82 agreement (GCX:131). On April 12, 1982 Mr. Caravantes sent a reply to the Union stating that Respondent was agreeable to commencing bargaining on a new contract (GCX:133). A data of April 27, 1982 was set, and the first of many bargaining sessions was held on that date. Bargaining sessions continued until November 1982, with the parties failing to reach agreement on a new contract.

The General Counsel alleges that Respondent did not bargain in good faith during the bargaining for a new contract. The General Counsel asserts that Respondent's conduct at the bargaining table, including refusing to provide needed information and proposing regressive and unacceptable proposals, combined with Respondent's anti-Union activities away from the table, show that Respondent only engaged in bad faith surface bargaining.

Respondent denies that it bargained in bad faith, and asserts that the Union bargained in bad faith.

1. Actions at the Table and Requests for Information The main negotiator for the union during the bar-

gaining was Ms. Deborah Miller, and Respondent's main negotiator was Mr. David Caravantes. The ranch committee attended the sessions for the Union, and Mr. George Johnston and Ms. Linda Tipton attended for Respondent (RT XXV:97). Mr. Juan Cervantes and Mr. Ben Maddock attended some of the sessions for the Union (RT XXV:97), and Mr. Elias Munoz attended some sessions for Respondent.

Ms. Miller had been a negotiator for the Union since 1977, and was the primary negotiator for a number of Union contracts involving other grape ranches in the San Joaquin Valley (RT XXV:2-4). She testified that she was informed by the Union in March that she would be its chief negotiator for a new contract with Respondent. She met with the ranch committee at that time, and discussed problems they had with the "1981-82 contract and changes they would like to make (RT XXV: 10-11, 71-74). As a result of these discussions, Ms. Miller drew up the Union's first proposal (GCX:121). She testified that the main concerns workers had were the reduction of work due to subcontracting, and hiring of additional crews in the 1981 harvest and the 1982 pruning season; the use of crew seniority, especially in light of the extra crews that were being brought in; the delinquency on payments of benefits and dues deductions under the 1981-82 agreement; and Respondent's hiring procedures (RT XXV-.39-102).

Ms. Miller sent a letter on April 8, 1972 to Mr. Caravantes (GCX:123). This letter requested certain "information which is necessary to our bargaining." The information

requested included the names of Respondent's crew foramen and supervisors, and the list of crops the company grew and harvested in 1981-82, including acreage of each (GCX:123). Ms. Miller testified that the Union wanted the names of crew foremen to help determine which crews were senior crews, in connection with the discussion of crew seniority (RT XXV:75). The request for list of crops was in connection with the Union's concern over loss of work in the previous harvest, and the Union's belief that Respondent was abusing the existing subcontracting clause in the 1981-82 agreement (RT XXV: 71-74, 82-83).

On April 27, 1982 the parties met for the first bargaining session. At that session they agreed to ground rules, including the general rule that "each article would be tentative until all the articles were agreed upon" (RT XXV:97). Ms. Miller stated at the session that she had authority to agree to proposals for the Union, and Mr. Caravantes stated that he had similar authority "for Respondent.

After the discussion of the ground rules, Ms. Miller submitted the Union's first proposal (GCX:121). Ms. Miller told Mr. Caravantes, in connection with the Union's proposal, that the Union was willing to use the 1981-82 agreement as the basic framework, and would propose some changes and additions to it. She also stated that the Union reserved the right to make other changes if Respondent sought to make changes (RT XXV:100).

The Union's proposal of April 27th contained the follow-

ing main proposals:

Hiring -- that the 1981-82 agreement (Article 3) be changed to add more than two days' notice to the Union. Ms. Miller testified that this proposal was a result of the lack of notice the Union had received concerning 1981 and 1982 hires under the old contract (RT XXV:76-78).

Seniority -- that the 1981-82 agreement (Article 4) be changed to provide for individual seniority, instead of crew seniority. Ms. Miller testified that this proposal was in response to problems about crew seniority in light of Respondent's unprecedented use of outside crews in the 1981' harvest and the 1982 pruning season (RT XXV:79-80).

Subcontracting -- that the 1981-32 agreement (Article 17) be changed, to include raisins as bargaining unit work (i.e., exclude it from subcontracting).

Hours -- that steady workers be guaranteed 60 hours work per week during the harvest season. Ms. Miller testified that this proposal was in reponse to the loss of work and the elimination of Saturday work during the 1981 harvest and the 1982 pruning seasons (RT XXV:88-89).

Delinquencies -- the Union's package contained a number of provisions adding extra penalties for delinquencies in payments of vacation, health, pension, dues, and other benefits. Ms. Miller testified that these proposals were in response to Respondent's repeated delinquencies under the 1981-82 agreement (RT XXV-.71-74, 33-93).

In addition to these changes, the Union's proposal con-

tained economic requests:

Wages -- an increase to $5.25 for the basic labor rate (from $4.45 under the 1981-82 agreement).

Holidays -- addition of Memorial Day and Citizen's Participation Day.

Pension — an increase from 10 cents per hour to 13 cents per hour.

RFK Medical Plan — The 1981-82 agreement contained the RFK Plan (Article 30), and the Union sought to add dental and vision plans to it.

The Union's April 27th proposal also sought payments into the Martin Luther King Fund, a permanent Union representative from among Respondent's workers who would be compensated for time spent enforcing the contract, and the deletion of the no-strike clause from the 1981-82 agreement.

In addition to presenting the Union's package, Ms. Miller asked Mr. Caravantes on April 27th about a response to her April 8th letter (GCX:123) requesting information. Mr. Caravantes indicated that he was checking to see which of that information he had to provide. Mr. Caravantes did not make any proposals at the April 27th session, and a new session was set for May 6th.

In connection with the first session and all the others, Ms. Miller was asked if Respondent's representatives at any time stated they were claiming economic inability to pay, in response to Union economic proposals, and she testified that Respondent's representatives did not claim that as a reason

for rejecting Union proposals (RT XV:68).

There were a total of 27 bargaining sessions between April 27, 1982 and November 12, 1982."[40] During that time, a large number of proposals were submitted back and forth by the Union[41] and Respondent,[42] approximately 35 in all.

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[40] Bargaining sessions were held on:
1. April 27, 1982 (RT XXV: 39)
2. May 6 (RT XXV: 10 2)
3. May 13 (RT XXV: 11 7)
4. May 21 (RT XXV: 124)
5. May 28 (RT XXV: 13 2)
6. June 1 (RT XXV: 148)
7. June 3 (RT XXV: 148)
8. June 10 (RT XXV: 148)
9. June 17 (RT XXVI : 18)
10. June 23 (RT XXVI: 35)
11. July 6 (RT XXVI: 70)
12. July 29 (RT XXVI: 83)
13. August 5 (RT XXVI: 120)
14. August 17 (RT XXVI I: 21)
15. August 25 (RT XXVI I: 90)
16. September 1 (RT XXVI I: 100)
17. September 2 (RT -XXVII : 100)
13. September 15 (RT XXVIII: 3)
19. September 24 (RT XXVII I: 25)
20. September 28 (RT XXVI II: 48)
21. September 30 (RT XXVIII: 67)
22. October 8 (RT XXVIII :83)
23. October 15 (RT XXVIII: 97)
24. October 21 (RT XXVII I: 105)
25. October 27 (RT XXVIII: 123)
26. November 5 (RT XXVII I: 141)
27. November 12 (RT XXVII I: 151)

[41] The Union made written proposals to Respondent (GCX: 121) on:

April 27,1982
May 13
June 1
June 3
June 10
June 17
June 23
July 6
July 29
August 17
August 25
September 2
September 15
September 24
September 28
September 30
October 3
October 21

[42] Respondent made written proposals to the Union (GCX: 119, on :

There were also exchanges concerning requests for information (GCX:123).

In discussing the negotiations and the progress, or lack of progress, towards reaching an agreement, I note that several items were essentially never in disagreement. About half of the articles of the 1981-82 collective bargaining agreement were quickly agreed to unchanged.[43]

May 3, 1982
May 28
June 3
June 10
June 17
June 23
July 6
July 29
August 5
August 25
September 2
September 15
September 24
September 30
October 15
October 27
November 5
November 12

[43]In proposals of May 13, 1982 and May 28, 1982, Union and Respondent agreed that 21 of the 41 articles of 1981-82 collective bargaining agreement would remain changed:

Article 1 -- Recognition
Article 2 -- Union Security
Article 7 -- Location of Company Operations
Article 9 -- No Discrimination
Article 11 -- Rest Periods
Article 12 -- Maintenance of Standards
Article 13 -- New or Changed Operations
Article 14 -- Union Label
Article 19 -- Injury on the Job
Article 20 -- Employee Security
Article 21 -- Reporting and Standby Time
Article 25 -- Credit Union Withholding
Article 26 -- Bereavement Pay
Article 27 -- Jury Duty and Witness Pay
Article 28 -- Records and Pay Periods
Article 29 -- Income Tax Withholding
Article 33 -- Family Housing
Article 34 -- Modification
Article 35 -- Savings Clause
Article 36 -- Successor Clause
(GCX:119, 121)

On May 3, 1982 Respondent replied to the Union's proposal (GCX:119). Respondent rejected all of the Union's proposals in the April 27th proposal.[44] Respondent stated that it was making no counterproposals at the time and reserved the right to make counterproposals later.

On May 28th, Respondent made its first proposal, again rejecting all of the Union's April 27th proposals and also proposing changes in a number of the articles in the 1981-82 agreement which the Union wanted unchanged.[45]

Among the articles which Respondent wanted changed were: Supervisors (Article 15) -- Respondent wanted an addition allowing crew foremen (whom Respondent stipulated at the hearing were supervisors within the meaning of the Act) to do bargaining unit work in some circumstances.

Access to Company property (Article 6) -- Respondent wanted written notice of access when a Union representative came to the premises to discuss with employees a grievance. It wanted notice of the particular grievance to be discussed. It wanted a clause banning a Union representative from the premises for six months if the representative

[44]Two minor points to the supplemental agreement clause were agreed to by Respondent: provision of umbrellas to tractor drivers and publication of work rules (GCX:119).

[45]In its May 28th proposal Respondent agreed to a Union May 13th letter requesting that a number of 1981-82 articles remain unchanged. These articles are listed in Note 43, supra. Although in its May 28th proposal Respondent stated it was "accepting" the "Union's proposal" to keep these articles unchanged, there is no evidence that Respondent ever wanted any of the articles (many of them standard contract clauses) changed. I find that the agreement-on the articles listed in Note 3, supra, was mutual and not a result: of concessions by either party.

violated the notice provision.

Discipline and Discharge (Article 8) -- The 1981-82 contract provided for discharge for "just cause." Respondent proposed to add a list of nine acts which would be basis for immediate discharge: theft, falsifying applications for work; fighting; drinking; possessing firearms; destroying "or misusing" company property; "absence for three (3) consecutive working days without notice;" falsification of time sheets; and direct insubordination.

Mechanization (Article 18) -- The 1981-82 agreement allowed Respondent to introduce new machinery except for harvesting table grapes. Respondent proposed to delete the exception for table grapes.

Travel Pay (Article 38) -- The 1981-82 agreement gave employees in Delano an option to accept work at Respondent's Arvin premises. Respondent proposed that employees should be required to work at Arvin if Respondent assigns them.

Duration (Article 41) -- Respondent proposed that the new contract be in effect for one year from the date of execution (i.e., no retroactivity if signed after the expiration of the 1981-82 agreement on June 6th).

Regarding economic proposals, Respondent proposed a wage freeze, a freeze on the amount given to the pension plan. Respondent also proposed eliminating the RFK health plan and substituting a California Grape & Tree Fruit Insurance Trust ORO Plan (herein "ORO Plan").

Thus, as of May 28th, the parties were divided on about 20 of the articles from the 1981-82 agreement:

Article	Union Position	Respondent's Position
3 (Hiring)	Add to notice provision	1981-82 language
4(Seniority)	Individual seniority	1981-82 language
5(Grievance)	Switch selection of arbitrators from State Conciliation Service to AAA of Federal Mediation	1981-82 language
6(Access to Company Property)	1981-82 language	Written notice of access. Name grievance. Bar Union rep. for 6 months for failure to notice Respondent.
8 (Discipline & Discharge)	1981-82 language	Add 9 categories of immediate discharge
10 (Health & Safety)	1981-82 language	Change in safety committee
15(Supervisors)	1981-82 language	Crew foremen be allowed to do bargaining unit work in some circumstances.
16 (Management Right)	Delete right to establish crew size	1981-82 languge

Article	Union Position	Respondent's Position
17 (Subcontracting)	Delete subcontracting raisins	1981-82 language
18 (Mechanization)	1981-82 language	Delete exception for table grape harvest
22 (Leaves of Absence)	Minor changes.	1981-82 language
23 (Holidays)	Add 2 holidays	Delete piece-rate holiday pay
24 (Vacations)	Slightly more vacation pay after 5 years	1981-82 language
30(Medical Plan)	1981-82 Plan (RFK) plus vision and dental	Eliminate RFK, change to ORO Plan
31 (Pension)	18 cents/hr (from 10 cents)	1981-82 language (Stay at ten cents) 1981-82 language
32(No-Strike/ No-Lockout)	Delete clause	
37(Reporting)	Add penalties for delinquencies	1981-82 language
38(Travel Pay)	1981-82 language	Mandatory assignment of work at Arvin for Delano workers. 1981-82 language Wage freeze at 1981-82 levels
39 (Hours of Work)	Guarantee 60 hours	
40(Wages)	$5.25/hr for basic labor rate (from $4.45). Raises in other categories.	

Article	Union Position	Respondent's Position
41(Duration)	1 year from 1981-82 agreement. (Thus, wages & benefits retroactive if new agreement signed after June 7, 1982).	1 year from execution (no retroactivity).

Of these articles, certain ones were minor and played no important part of the negotiations.[46] Concerning alleged bad faith bargaining, the General Counsel focuses on Respondent's position concerning wages/economic benefits, health plan, and subcontracting. Respondent alleges that the Union bargained in bad faith concerning the health plan, subcontracting, wages, delinquencies, and payroll periods. The General Counsel also alleges that Respondent's bad faith is shown by its refusal to provide necessary information.[47]

In clarifying the issue of bad faith, I find that the areas of alleged bad faith bargaining at the table center on four issues:

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[46]These included Article 5 (Grievance), Article 13 (Health and Safety), Article 22 (Leaves of Absence), and Article 24 (Vacations). There was a considerable amount of bargaining over the Health and Safety Article, but I find it was straightforward and did not present a major area of dispute in the same degree as that of wages, health plan, and subcontracting, discussed in text infra.

[47]The General Counsel also alleges that Respondent's lack of good faith can be seen from its anti-Union actions away from the table. My findings concerning those actions are discussed in the next part of this Section.

(1) Respondent's alleged failure to provide information concerning crew foremen in connection with the bargaining about seniority, and concerning the harvest of raisins and other information in connection with bargaining over subcontracting.

(2) The bargaining concerning wages and pensions.

(3) The bargaining concerning health plans.

(4) The bargaining concerning subcontracting.

Before turning to a discussion of these four issues, I note preliminarily that Respondent also alleges bad faith regarding the Union's proposals for increased delinquency payment's. I find no evidence of bad faith in this regard. Given Respondent's repeated delinquencies on dues and benefits during the 1981-82 contract, which delinquencies (as discussed in Part 2 of this Section, infra) continued during the bargaining on a new contract, I find it was reasonable for the Union to make proposals concerning delinquencies. Similarly, I find that there is ample credible evidence, aside from the assertions of the negotiators, that in 1981 and 1982 regular workers lost work due to outside crews. [48] Thus I find that the Union had a reasonable basis for proposals concerning crew seniority. I also find that there is ample credible evidence, aside from the assertions of the negotia-

[48] I have found that Respondent violated Section 1153 (a), (c), and (e) of the Act by employing excessive additional crews in the 1981 harvest (Section VII of this Decision), and the 1982 pruning season (Section IX of this Decision).

tors, that the Union was not given proper notice of hiring under the 1981-82 agreement. Thus I find that the Union had a reasonable basis for proposals concerning notice of hiring.[49]

Turning to the four main issues concerning bad faith at the table, I find that the evidence and testimony shows the following.

(a) Requests for Information.

On April 8, 1982 Ms. Miller sent the Respondent a letter requesting "information which is necessary to our bargaining" (GCX:123, p.l). Included in the information requests were:

"1) The names of all foremen, forewomen, and supervisors.

• • •

3) A list of crops and varieties which your Company grew, harvested, or on which your Company performed

[49]I also find no bad faith concerning the bargaining about Article 28 (Records and Pay Periods) . The Union initially "signed off" (agreed to) that Article on May 28th, because it did not notice that a single word had been changed and believed it was signing off on the unchanged 1981-82 contract language, as it did on twenty other articles that session (RT XXV:132-136). There was no oral discussion of Article 28, and I find it reasonable under the circumstances that Ms. Miller could have made that mistake.

I find that the Union's proposal to delete from the Management Rights article the provision allowing Respondent to determine crew size had a reasonable basis in past actions of Respondent. There was considerable evidence that the crew size had been changed by Respondent during the 1981 harvest and at other times. The Union could reasonably have felt that the size o£ crews went along with crew seniority and the other problems involving loss of work for regular crews in the 1981 harvest and 1982 pruning season. The Union later dropped this proposal.

production operations during 1981 and 1982, including acreage and Ranch number." (GCX:123, p. 1)

On April 27th, at the first bargaining session, Ms. Miller asked Mr. Caravantes for the information requested in the letter, and Mr. Caravantes responded that he was still determining what information he was required to give to the Union (RT XXV:99)>

On May 6th Mr. Caravantes sent a letter to Ms. Miller (GCX:123, p. 2). He provided information in response to Ms. Miller's letter of April 8th, but concerning the request for foremen he responded by listing Respondent's supervisors and stating that "no foremen or forewomen are presently employed" (GCX:123, p.l). Concerning crop information, Mr. Caravantes did not provide information as to the acreage of the raisin crop (RT XXV:106).

At the second bargaining session on May 6th, Ms. Miller told Mr. Caravantes she wanted the names of the crew foremen:

"A. David [Caravantes] said that, when I asked him why the crew bosses weren't listed, he said he hasn't decided who the crew bosses were going to be. There might be some changes, and I asked him, you mean you're going to change everybody, you're going to change all of them? And he said he might, they might just change all the crew bosses, so I said at that point that at that time when the decision was made, he should let us know who all the crew bosses were." (RT XXV:104)

Ms. Miller testified that in a previous phone conversation with Mr. Caravantes on April 14th, she had explained that the Onion wanted the names of the crew foremen because the Union wanted to raise the issue of crew seniority, and it wanted the information to help determine which crews were senior crews and how the company intended to recall the regular crews (RT XXV:75).

At the May 5th bargaining session Ms. Miller discussed the issue of subcontracting raisins with Mr. Caravantes (RT XXV:113). On May 13, 1982 Mr. Caravantes sent another letter to Ms. Miller (GCX:123, p. 3). Entitled "Employer's response to information requested by Union at Negotiation session dates 5-6-82," it gave the Union the names of four crew foremen. It also provided information on the piece-rate work for raisins, but did not give the Union information about the acreage of raisins Respondent harvested in 1981 the acreage it intended to harvest in 1982.

At the third bargaining session on May 13th, Ms. Miller again raised the question of the inadequacy of the information provided by Mr. Caravantes:

> "A. The first thing we talked about was the names of the crew bosses. I told him that he had only provided the names of four crew bosses and that I thought there were more crew bosses. He insisted that these were the names of all the crew bosses who were currently employed and currently working for Tex-Cal. I told him that was not

what I wanted. What I -wanted was who their crew bosses were. Whether they were on lay-off or not, I wanted to know who the crew bosses were, and I said the week prior he had told me that the reason he couldn't give to me was because they were all going to be different, and that these [four], in fact were some of the same, one was different, I guess, but the others were the same people that had worked for him in past years so that he must know who his bosses were going to be when they built up the crews.

Q. What did he say?

A. He just repeated that this is who is currently employed, these were his current crew bosses, and he insisted that answered the request.

Q. He refused to provide you with other information?

A. Yeah, he refused to provide any other crew bosses. He insisted that this answered my request, and I told him that it didn't, and I renewed my request.

Q. What was the problem in terms of what you wanted?

A. I wanted to know who their crew bosses were, who the crew bosses were who work for Tex-Cal.

Q. Why?

A. Because, again in terms of establishing the seniority, I wanted to know who they were talking about as having seniority, which crews they considered to be crews, who the bosses were, I also expected we'd be talking to workers during the bargaining, and I wanted to know who was employed." (RT XXV:118-119)

Concerning raisins, Ms. Miller testified:

"A. ... On the raisins, all he provided was what was right in this letter [May 13th letter], just the rate, and what I didn't have was any production information that would show how much work had been done, how many units had been picked, anything that I could use to determine how that sixteen cents per tray worked out for people.

Q. In your April 8th letter, did you request that information?

A. Yeah, that was item number four in the letter.

Q. And then, did you renew that request here at this meeting [May 13th session]?

A. Yeah, I did, and he said that what they provided here in the letter on the raisins was all that they had to provide, that the rest of it I could get from Gilbert Renteria, and I told him that he had a responsibility. That Gilbert wasn't the employer, that the company had the responsibility to get the records on the raisins from Gilbert.

Q. And what did he say?

A. He insisted that they didn't that I should get them from Gilbert Renteria.

Q. So he refused to provide that information?

A. He did." (RT XXV:120-121)

On May 14, 1982 Ms. Miller sent Mr. Caravantes another letter, again requesting:

"1) Names of all forepersons and their crew number.

2) Production information for raisin harvest of 1981 which will show the following:

a) Number of units produced.

b) Total hours worked on units produced.

c) Total amount paid for units produced.

d) Average hourly rate."

(GCX:123, p. 4)

On May 21, 1982 Mr. Caravantes sent a letter to Ms. Miller stating: "The following forepersons are currently on Tex-Cal Land Management Inc.'s payroll," followed by a list of six crew forepersons (including three of the four that had been listed in the previous letter) (GCX:123, p. 5).

At the fourth bargaining session, on May 21st, Ms. Miller again raised the issue of providing this information:

"A. I told [Mr. Caravantes], I still asked him where the other crews were, that I understood that there were at least ten seniority crews, and he only provided the names of six of them. I also pointed out to them that the prior week, on the 13th, when he had given me the names of only three, I believe, or four people, on that day they had in fact recalled six crews. They later rescinded the recall, but they had recalled six craws, or planned on recalling six crews, so they must have known the names of more foremen than that at the time, and again, when I

pressed and said where were the rest of the crews, that we were missing four crews still, George Johnston at that point jumped in and said, 'Well, there's thirty-eight crews,' at which point I indicated that as far as were concerned, they were not, those thirty-eight crews were not seniority crews, but that we wanted to know their crews.

• • •

From the May 13th letter, ... Crew 64 was listed on May 13th and Crew 64 was deleted on [the May 21st letter], which I figured what they were doing, I don't know whether that crew was laid off that day, but he was going to provide me only with the exactly specifically who was working that day for Tex-Cal, which boss was actually working...." (RT XXV:126-128)

Concerning raisin information, Ms. Miller testified that at the May 21st session:

"A. ... I reminded [Mr. Caravantes] that we didn't have the raisin production information yet, and did he have any of that for us today, and [he] ... said that as far as he was concerned it had been provided, they had complied, and I said well, we don't have it. All we have is the, just the price pay, we don't have any of the production information. He insisted that we [i.e. Respondent] gave our answer, we responded to that, and that's it." (RT XXV:123)

On May 28th Ms. Miller sent another letter to Mr. Caravantes requesting the information concerning crew foremen and the raisin harvest (GCX:123, p. 6).

On June 17th, Mr. Caravantes sent a letter to the Union stating: "In a further effort to reach an agreement the Company submits the following information as an update of fore-people currently employed." The letter contained the name of three foremen (GCX:123, p. 8). There were no crew members listed for the foremen.

On September 1, 1982 Respondent provided a list of current crew bosses (foremen), "who we propose to be eligible to participate in our proposal of Supervisors [foremen Respondent wanted to be able to do bargaining unit work]" (GCX: 123, p. 11). On October 21, 1982, six months after the negotiations began, Respondent gave the Union a list of crews and crew bosses, listed in order of seniority (GCX:123, p. 14). The list contained 13 crews.

Respondent did not provide the Union with information concerning acreage and production of the raisin harvest.

In connection with the requests for information, I note that at the hearing a list of Respondent's pruning crews and crew foremen, in order of seniority, was introduced into evidence. The list was dated 3/22/82, and contained a total of 37 crews (GCX: 14).

(b) Proposals on Wages and Pensions.

On April 27, 1982 the Union proposed a wage increase in the basic wage rate from $4.45/hour to $5.25/

hour. The Union also proposed increasing the pension from ten cents per hour to eighteen cents per hour. This proposal was presented to Respondent at the first bargaining session.

At the first bargaining session (April 27th), Respondent stated that it had no proposals at the time, and would study the Union proposals.

On May 3rd, Respondent sent the Union a response to the April 27th Union proposals. Respondent rejected the wage and pension proposal, and stated: "The employer gives no counterproposal at this time and reserves the right 'to respond at a later date" (GCX:119).

At the second bargaining session on May 6th, Respondent made no proposals (RT XXV:108).[50]

At the third bargaining session on May 13th, Respondent made no proposals. Mr. Caravantes and Mr. Johnston indicated that they would make no proposals until the Union provided them with a summary plan on the Union's request for an increase in the RFK medical plan to include dental and vision. The Union had previously provided Respondent with a brochure on the plan at the first session (April 27th). Ms. Miller testified:

> "A. I asked if the company had any proposals, and George Johnston said they didn't have any response on the proposals, that they wouldn't have the response on any of the proposals until they had received a copy of the summary plan description regarding the medical plan from us."

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[50]The parties agreed to the Grievance Article at this session (RT XXV:134-135).

(RTXXV:121)

Ms. Miller also testified that prior to May 13th, at the second session (May 6th), she had told Mr. Caravantes and Mr. Johnston the cost of the Union's proposed RFK plan (RT XXV:116), and Mr. Johnston testified that Ms. Miller had given him that information (RT XLV:14-15). The brochures which Ms. Miller gave Respondent on April 27th were introduced into evidence (GCX:144). They contain a description of the Plan, and a summary of the benefits covered.

At the fourth session on May 21st, Ms. Miller gave Respondent the Summary of the RFK Plan (GCX:151). This contains a more detailed summary of benefits than the brochures.

At the fourth session (May 21st) Respondent made no proposals. Upon receiving the summary of the RFK, Mr. Johnston and Mr. Caravantes stated that they would soon be able to make proposals to the Union (RT XLV:19). Mr. Johnston and Mr. Caravantes also stated at that meeting that the reason they had been unable to make any proposals to the Union, economic or non-economic, was because they had not received the Summary of the RFK plan (GCX:154, pp. 15-16; RT XLV:19).

At the fifth bargaining session on May 28th, Respondent made its first proposals. Regarding economic proposals, it proposed a wage freeze ("Wages: Same as 1981-82 Contract Language"), and a freeze on the amount of pension contributions ("Juan De La Cruz Pension Plan: Same as 1981-82 Contract Language") (GCX:119) .

At the seventh bargaining session on June 3rd, the Union

reduced its wage demand to $5.15 for the general labor rate (GCX:121).

At the eighth bargaining session on June 12th, Respondent resubraitted its proposals for a wage and pension freeze (GCX: 119). At that session the Union, agreed to keep the 10 cents/ hour pension contribution (GCX:121). The Union also gave up its proposal to add Memorial Day and Citizen's Participation Day as holidays (RT XXVI:12-13).[51]

No wage proposals were made at the ninth bargaining session on June 17th or the tenth bargaining session on June 23rd (GCX:119, 121).

At the eleventh bargaining session on July 6th, the Union dropped its demand for a guarantee of 60 hours of work/week. Respondent made no wage proposal and continued to adhere to its proposal for a wage freeze.

At the twelfth bargaining session on July 29th, the Union dropped its wage proposal to $5.00/hour. Respondent continued to adhere to its proposal for a wage freeze.

At the thirteenth bargaining session on August 5th, Respondent resubmitted its proposal for a wage freeze (GCX: 119). In connection with that session, Ms. Miller testified that the wage of S4.45 which Respondent continued to propose was 25 cents/hour less than the going wage for the industry (RT XXVI:122-125). Respondent also continued to press for no retroactivity in wages, which would mean that under its pro-

[51]The Union also gave up its proposal to change the Management Rights article and agreed to the old 1981-32 contract language.

posal the 1982 harvest would be worked at the 1981 rates, and, since it proposed a one year contract duration from the time of execution, much of the 1983 harvest would also be worked at the 1981 rates. Ms. Miller testified that the standard contracts in the area use June as a cutoff date, so that new wages go into effect with the new harvest in July of each year (RT XXVI:123). Ms. Miller further testified that non- union ranches in the area at that time were already receiving $4.70/hour for the 1982 harvest (RT XXVI:125).

Respondent made no wage proposal at the fourteenth bargaining session on August 17th.[52] Similarly Respondent made no wage proposal at the fifteenth bargaining session on August 25th (GCX:119).

At the sixteenth and seventeenth sessions, on September 1st and 2nd, the Union presented a package proposal[53] reducing its wage demand to S4.95 and coupling that with acceptance of the RFK health plan (GCX:121). Respondent made no wage proposals at those sessions.

At the eighteenth session on September 15th, five months after bargaining began, Respondent made its first wage offer other than a wage freeze. It proposed a package coupling its ORO health plan with a 10 cents increase in wages to $4.55/ hour (GCX:119). The wages would be for one year from that

[52]Respondent and the Union agreed on the Holiday article at this session (RT XXVII:50).

[53]A package proposal is one in which all items in the package must be accepted or the proposal is considered rejected.

data (not retroactive to the end of the L981-82 agreement in June).

At the nineteenth session on September 24th, the Union proposed, as part of a package of proposals, a two-year proposal with wages of $4.85/hour for the year from the end of the 1981-82 agreement (June 1982) until May 30, 1983 (which would cover the 1982 harvest season), and wages of $5.20/hour beginning in June 1983 (GCX:121). Respondent made no wage proposal at that session.

No wage proposals were made at the twentieth session on September 28th.

At the twenty-first session on September 30th Respondent presented a package proposal involving 16 articles still unresolved, including wages. In this package proposal the Respondent proposed $4.60/hour (GCX:119). In rejecting this package, Ms. Miller testified concerning the wages that Respondent's proposal was:

> "Ten cents below the industry [i.e. going rate at other ranches] plus they were only proposing that it start whenever we executed the contract. Everybody else had been making $4.70 since the prior June. I mean they had worked already over half the picking session." (RT XXVIII:73)

No further wage proposals were made during the remaining six sessions of the bargaining (October 8, 15, 21, 27, November 5, 12).

(c) Bargaining About a Health Plan.

The bargaining over the health plan can be summarized as follows: Under the 1981-82 collective bargaining agreement (GCX:52) the employee were covered by the Union's Robert F. Kennedy Farm Workers Medical Plan (RFK Plan). In the bargaining over a new contract, the Union proposed an addition to the basic Plan A which the employees had, dental and vision programs. This was RFK Plan C. Later the Union reduced its proposal to RFK Plan B, which included vision but not dental. Respondent at the bargaining proposed to eliminate the RFK Plan and switch to the California Grape & Tree Fruit Insurance Trust Group Life and Health Plan, called the "ORO Plan."[54] Respondent adhered to this ORO Plan for three months, from the beginning of the bargaining until August 25th when it modified its ORO Plan slightly. It adhered to the modified ORO Plan until the final stages of the bargaining, when Respondent dropped its ORO Plan and proposed on November 5th the RFK Plan packaged with Respondent's subcontracting article. In the Respondent's November proposal the RFK Plan was stated to be one that included vision (Plan B), but Respondent's monetary offer of 38 cents/ hour for the initial months indicates that it may have only been proposing a continuation of Plan A (the cost of maintaining the RFK Plan A would have been 38 cents/hour).

[54]In a number of cases the transcript reference to the ORO Plan was transcribed "oral Plan." This was a phonetic misinterpretation- and not a factual reference to any verbal, as opposed to written, plan. All proposals concerning the health plans were reduced to writing.

Respondent also proposed that if RFK Plan costs exceeded 40 cents/hour during the contract, the additional cost would come out of employees wages. (See Union's proposals on April 27th, July 29th, August 17th and September 2nd (GCX:121); Respondent's proposals on May 3rd, May 28th, August 25th, September 2nd, September 30th, and November 5th).

In reviewing the evidence and testimony, I find that although there was some give and take and the parties came closer to agreement,[55] the central issue concerning bad faith is whether Respondent (which never claimed financial inability to pay) proposed and adhered to for months a health plan which provided less coverage than that already enjoyed by the employee. The Union at the bargaining and the General Counsel at the hearing allege that the ORO Plan was a regressive proposal, providing less benefits to the workers than they already had. Respondent asserts that the ORO Plan was fully equivalent to the coverage the workers had under the RFK Plan. Thus I turn to an examination of the evidence and testimony concerning the two plans.

A comparison of the plans reveals that in a number of respects the ORO Plan did not in fact provide equivalent benefits to the RFK Plan A the employees currently had. Some of the major differences included: the RFK Plan provided for up to $1,200 per year in doctor visits, while the ORO Plan was limited to S400 per disability. The RFK Plan provided $6,000

[55]It is not clear how close the parties came to agreement, because Respondent coupled its RFK proposal to a subcontracting proposal which the Union opposed.

in life insurance, the ORO Plan provided $2,000. The RFK Plan provided a self-payment clause (employee could pay premiums themselves when they did not work enough to qualify for the Plan) which would cost $35/month; the ORO Plan required the employee to pay the regular monthly premium, which, though not precisely specified, would have been more than $35. The RFK Plan provided unlimited prescription drugs, and a prescription plan (called the "Thrifty" Plan) which allowed employees to use the Thrifty drug stores; the ORO Plan did not have the "Thrifty" Plan, and provided a $100 per year maximum on prescription drugs. A further significant difference was that eligibility for the RFK Plan was based on the employee working 60 hours per month, while the ORO Plan based elibigility on working 80 hours per month. There were some areas in which the ORO Plan provided greater benefits than the RFK Plan, mainly in a lifetime maximum major medical coverage of $100,000 compared to $20,000 under the RFK Plan.

In discussing the comparability of the two Plans, Mr. Johnston (who was Respondent's principal negotiator involving the health plan) admitted that the ORO Plan as originally proposed by Respondent and adhered to for three months until August 25th, did not give fully comparable coverage to the RFK Plan:

> "Q." Weren't you telling them at the table every time you asked for information that your mission in life was the master [health] plan? And then after [May] 28th you kept asking for more and more information so that you could match the plan?

A. Yeah, that sounds pretty good.

. . .

Q. Okay. And then every time you came to the table with a new addition to your Oro plan, you said, 'Well, we've matched it now.' And then you would come back and offer some more and say, ‘Well, we've matched it now.' Wasn't that you on the 25th of August and the 2nd of September?

• • •

A. I don't remember the exact dates, but I know it happened a number of times during negotiations."

(RT XLV:24-25)

"Q. You knew back on [May] 28th that your plan was lacking the Thrifty plan, didn't you?

A. Yes.

...

Q. All right. When you increased the life [insurance] and tried to match the RFK, did you also have to pay a few extra dollars [in premiums under the ORO Plan]?

A. Yeah, I think that was under two dollars.

Q. The Union again said, 'No you haven't matched the plan. The plan is deficient.' And you came back about a week later with some more additions, right?

A. What time?

Q. That was August 25th.

A. Okay. And then the next one was September 2nd...." (RT XLV:28)

In sum, I find concerning the health plans that the employees had coverage under the 1981-82 contract with the RFK Plan, and that for the first four months of negotiations Respondent proposed an ORO Plan which in a number of respects provided less coverage and benefits to the employees than they already enjoyed under the RFK Plan.

(d) Bargaining about Subcontracting.

There were a number of proposals presented during the negotiations concerning subcontracting. (See Union proposals of April 27th, May 21st, September 24th, September 28th, and September 30th; Respondent's proposals of May 3rd, June 10th, July 6th, and September 24th). However, I do not find evidence of bad faith in the proposals themselves, in the Union's efforts to reduce the amount of subcontracting because of its belief (substantiated by my findings in this case) that the subcontracting clause of the 1981-82 contract was being abused, or in Respondent's adherence to the 1981-82 language. Rather, I find that evidence of bad faith regarding subcontracting centers around Respondent' failure to provide relevant information on that issue. I have already discussed the providing of information during the bargaining, supra.

2. Actions Away From the Table.

As seen from my findings in this Decision on the alleged unfair labor practices during 1981 and 1982,. during

the bargaining Respondent violated the Act by a number of actions away from the table which showed anti-Union animus, and which, in most cases, directly undercut the bargaining:

(1) While the Union was pressing during the bargaining for tougher delinquency clauses, Respondent continued to fail to pay the dues and premiums under the 1981-82 contract. It is undisputed that the bargaining began on April 27, 1982, and that during the bargaining Respondent failed to pay vacation pay due in June 1982 (paid a month late, on July 13th) (GCX:123, 130; RT XXV:42-43); failed to pay pension payments due in June 1982 (paid in August, after arbitration proceedings were brought) (GCX:125, 126, 127; RT XXV:49); failed to pay RFK health plan payments for March and April (due in April and May; paid in June), and May (due in June, paid in July) (RT XXV:59-60); failed to send deducted dues to the Union (final settlement on dues reached in October 1982) (GCX:124; RT XXV:53).

(2) While the Union was bargaining over crew seniority, Respondent unilateraily transferred employees between crews, after receiving a letter from the Union indicating that the Union had not agreed to transfers. The transfers affected the seniority of employees.

(3) While the Union was bargaining over subcontracting, Respondent unilateraily increased its subcontracting of raisins by a large amount, which resulted in loss of work for the regular employees; Respondent also unlawfully subcontracted and contracted out bargaining unit work (tractor

work, irrigation, and swamping).

(4) While the Union was bargaining over tougher notice of hiring requirements because of previous problems with hiring in 1981, Respondent hired workers without proper notice to the Union in June 1982 and August 1982.

(5) While the Union was bargaining over a guarantee of work hours for employees, because of problems of loss of work in 1981 for regular employees, Respondent unilaterally and without notice to the Union eliminated swamping trucks in July 1982, which resulted in less hours of work for swampers.

(6) During the bargaining Respondent discriminatorily suspended seven employees because of their Union activities, including a Union steward who was a member of the ranch committee that attended bargaining sessions.

B. Conclusions of Law

In a long line of cases the Board has made clear that a violation of Section 1153 (e) of the Act for "surface bargaining" in bad faith is determined from an evaluation of the entire conduct of the employer, both at and away from the table. The factors at the table include failure to provide relevant material, insistence on regressive proposals, delay, and submission of proposals without justification; the factors away from the table include commission of unfair labor practices, acts showing anti-union animus, a prior history of refusal to bargain in good faith, and unilateral actions

which undercut the bargaining. See, e.g., O.P. Murphy & Sons, 5 ALRB No. 63; AS-H-NE Farms, 6 ALRB No. 9; McFarland Rose Production, 6 ALRB No. 18; Admiral Packing Company, 7 ALRB No. 43; Martori Brothers Distributors, 8 ALRB No. 23; Joe Maggio et al., 8 ALRB No. 72; J.R. Norton Company, 8 ALRB No. 89.

In the leading case of O.P. Murphy & Sons, 8 ALRB No. 53, the Board held:

> "The duty to bargain in good faith requires the parties "... to participate actively in the deliberations so as to indicate a present intention to find a basis for agreement, and a sincere effort must be made to reach a common ground. Mere talk is not enough. Although the Act does not require the parties to actually reach agreement, or to agree to any specific provisions, it does require a sincere effort to resolve differences, and ... presupposes a desire to reach ultimate agreement, to enter into a collective bargaining contract.'
>
> . . .
>
> Our task, therefore, is to determine whether Respondent met its '... obligation ... to participate actively in the deliberations so as to indicate a present intention to find a basis for agreement...' However, we do not find here, and it has rarely been found in other cases, an admission of intent to obstruct agreement. Rather, we must study the whole record, to discern Respondent's intent from the totality of its conduct."

(5 ALRB No. 63, pp. 3-4. Footnotes and citations omitted.)

In O.P. Murphy, supra, the Board found that the employer violated the Act. Among the factors the Board found evidencing bad faith were "failure promptly to provide a complete counter-proposal," "delay in furnishing requested information to the Union," and effecting unilateral changes in working conditions during the bargaining (5 ALRB No. 63, pp. 10, 12).

Applying the standards of O.P. Murphy and the other cases cited above, I find and conclude that Respondent engaged in bad faith surface bargaining in violation of Section 1153 (e) of the Act. The evidence shows that Respondent did not "indicate a present intention to find a basis for agreement," nor did it make "a sincere effort ... to reach a common ground" (O.P. Murphy, supra, 5 ALRB No. 63, p. 10). Rather, it is clear that Respondent intended, quite successfully, to delay any real agreement until the entire 1982 harvest season had ended.

I find many indicia of Respondent's bad faith, both at and away from the table:

(1) Respondent delayed making any proposals at all until May 28th. The 1981-82 agreement was due to expire on June 6th, and Respondent had the Union's proposals on April 27th. The reason Respondent gave was that the Union had not provided the full summary of the RFK Plan the Union was proposing. However, Respondent already had the cost for the plan, and a brochure giving a general summary. It may be

that Respondent in good faith could have delayed making any economic proposals until it received the full RFK summary, but Respondent refused to make non-economic proposals as well.

(2) Respondent's initial proposals included allowing supervisors (crew foremen) to do bargaining work, at a time when the Union's main concern was previous loss of work for its regular employees. It also proposed to mechanize table grapes, the main cultural work area for its regular employees. Respondent also proposed to change the "just cause" for termination to include nine categories of immediate discharge, although there was no evidence shown for the need for such a proposal. Respondent also proposed to make more difficult the access of Union representatives seeking to investigate grievances, at a time when Respondent's deliberate failure to meet dues and benefits under the 1981-82 contract was causing the Union to file numerous grievances.

(3) Respondent refused to provide information about subcontracting of raisins, at a time when (I have found, supra, it was violating the Act by unilaterally increasing such subcontracting to a degree which resulted in a loss of work for its regular employees. Respondent also delayed for months providing the Union with a full list of its crew foremen, information which, given the complex and at times unclear nature of crew seniority, was relevant to the bargaining over seniority.

(4) Respondent's wage and pension proposals con-

sisted of a wage freeze at levels below the going rate for the industry. Respondent at no time claimed inability to pay. Respondent refused to make any wage proposal until May 28th, when it proposed a wage freeze. It adhered to a wage freeze for seventeen sessions over a five-month period until September 15th, when the 1982 harvest was half over. It persisted in the wage freeze proposal despite the Union's concessions in agreeing to a freeze on pension rates, giving up its proposal to add holidays, and dropping its demand for guaranteed hours of work. When Respondent finally did make a wage proposal it proposed an increase in wages of 10 cents/ hour, not retroactive (thus not applicable to most of the 1982 harvest), and it coupled the wage proposal with acceptance of its ORO health plan.

(5) Respondent proposed a health plan which in a number of respects would have decreased benefits the employees enjoyed. Respondent did not claim inability to meet the costs of the existing health plan. Respondent adhered to its health plan proposal for seven months, until almost the end of the bargaining after the 1982 harvest was over.

(6) During the bargaining Respondent effected at least four areas of unilateral actions concerning subjects of bargaining: subcontracting and contracting out work, transferring employees (seniority), hiring without notice, and elimination of bargaining unit work.

(7) Respondent committed unfair labor practices during the bargaining, including failing to pay dues and

benefits under the existing 1981-82 agreement, and discriminatorily suspending seven workers because of their Union activities.

Thus the totality of Respondent's conduct presents a clear picture of surface bargaining. I find that Respondent did not make a "sincere effort to resolve differences," and did not show "a desire to reach ultimate agreement, to enter into a collective bargaining contract" (O.P. Murphy, supra, 5 ALRB No. 63, p. 12). In determining the date at which Respondent began bargaining in bad faith, I find that Respondent's posture from the outset of the bargaining evidenced a lack of good faith and a lack of a sincere intention to reach agreement. I find that Respondent did not intend to reach a contract to follow the expiration on June 6th of the 1981-82 agreement. Because any good faith agreement on a new contract would have begun after the June 6th expiration of the 1981-82 contract, I set the date of June 6th as the beginning of Respondent's violation of the Act for the purposes of the make-whole remedy (discussed in Section XV of this Decision, infra.)

In sum, I find and conclude that by the totality of its actions at and away from the table, Respondent did not bargain in good faith with the Union and did not intend to reach an agreement to follow the expiration of the 1981-82 collective bargaining agreement, in violation of Section 1153 (e) and (a) of the Act.

XIII. SUMMARY OF FINDINGS AND CONCLUSIONS CONCERNING RESPONDENT

I have found that in 1981 and 1982 Respondent engaged in a course of conduct that involved a number of violations of the Act. Specifically, my findings are:

1. Respondent violated Section 1153 (a), (c) and (e) by hiring excessive additional harvest crews in the 1981 harvest without notice to and bargaining with the Union, and for the purpose of reducing work for its regular bargaining unit employees (Section VII of this Decision).

2. Respondent violated Section 1153 (a) by refusing to timely pay Union dues and benefits under the 1981-82 collective bargaining agreement (Section VIII of this Decision).

3. Respondent violated Section 1153 (a), (c) and (e) in February 1982 by delaying the start of the pruning season and hiring excessive additional crews, without notice to and bargaining with the Union, and for the purpose of reducing work for its regular bargaining unit employees (Section IX of this Decision).

4. Respondent violated Section 1153 (a), (c) and (e) by unilaterally changing its employment appication form in February 1982 (Section IX of this Decision).

5. Respondent violated Section (a), (c) and (e) by subcontracting and contracting out bargaining unit work, without notice to and bargaining with the Union, and for the

purpose of reducing work for its regular bargaining unit employees (Section X of this Decision).

6. Respondent violated Section 1153 (a) and (e) in the 1982 harvest by hiring workers in June and August, 1982, transferring employees in July 1982, and eliminating swamping trucks, in July 1982, without proper notice to or bargaining with the Union (Section XI of this-Decision).

7. Respondent violated Section 1153 (a) in the 1982 harvest by the manner in which it hired workers in August 1982 (Section XI of this Decision).

8. Respondent violated Section 1153 (a) and (e) of the Act by unilaterally converting table grape vineyards to raisins in the 1982 harvest, reducing the harvest work for its regular bargaining unit employees, without notice to or bargaining with the Union (Section XI of this Decision).

9. Respondent violated Section 1153 (a) and (c) of the Act in August 1982 by suspending seven members of Crew 64 because of their Union activities (Section XI of this Decision).

10. Respondent violated Section 1153 (a) and (e) in 1982 by engaging in surface bargaining with the Union over a new contract to follow the 1981-82 collective bargaining agreement (Section XII of this Decision).

I have found that the General Counsel has failed to prove certain allegations:

1. The General Counsel has failed to prove that

Respondent violated Section 1153 (a) and (e) of the Act by bargaining directly with employees in the 1982 harvest (Section XI of this Decision).

2. The General Counsel has failed to prove that Respondent violated Section 1153 (d) of the Act by suspending seven members of Crew 64 for their ALRB activities (Section XI of this Decision) .

XIV. THE STATUS OF MR. DUDLEY M. STEELE

I have made my findings and conclusions above about the alleged unfair labor practices of Respondent. The final issue in the case is whether Mr. Dudley M. Steele is also liable for the unfair labor practices. In legal terms, the issue is whether Mr. Steele and Respondent constitute a single employer within the meaning of Section 1140.4 (c) of the Act.

Respondent and Mr. Steele deny that Mr. Steele and Respondent are a single employer. Mr. Steele further asserts that requiring him to bargain with the Union violates his constitutional right to due process of law.

In order to provide a framework for my findings of fact on this issue, I first set out the Board's legal standards for determining the existence of a single employer relationship. I then give my findings of fact, followed by my conclusions of law. In the conclusions of law I also deal with Mr. Steele[1]s assertion regarding due process of law.

A. Legal Standards for Determining a Single Employer

Beginning with its first case on the subject, the Board

has stressed that there is no one formula or rule for deciding what constitutes a single employer:[56]

> "Because patterns of ownership and management are so varied and fluid, we are reluctant to announce any mechanical rule in these cases...."
>
> (Louis Delfino Co., 3 ALRB No. 2, p. 3)

Rather, the Board will look to the totality of factors which tend to show that there is a single employer. In Louis Delfino Co., supra, the Board noted some of these factors:

> "[W]e will look to such factors as similarity of the operations, interchange of employees, common management, common labor relations policy, and common ownership." (3 ALRB NO. 2, p. 3)

In Louis Delfino Co., the Board cited the National Labor Relations Board's Twenty-First Annual Report (1956) as listing factors to be considered in determining a single employer (3 ALRB No. 2, p. 3, n. 2). In the next case on this issue, the leading case of Abatti Farms, Inc., 3 ALRB No. 83, the Board specifically approved the Investigative Hearing Officer's use of the NLRB factors in determining a single employer. The factors in the NLRB's Report were as follows:

> "[The NLRB] early reaffirmed the long-established practice of treating separate concerns which are closely

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[56]In the cases the term "joint employer" is used synonomously with "single employer" for the purposes of the Act. See, e.g., Rivcom Corporation, 5 ALRB No. 55, p. 4? Abatti Farms, Inc., 3 ALRB No. 83, p. 2.

related as being a single employer for the purpose of determining whether to assert jurisdiction. The question in such cases is whether the enterprises are sufficiently integrated to consider the business of both together in applying the juridsictional standards.

The principal factors which the Board weights in deciding whether sufficient integration exists include the extent of:

1. Interrelation of operations;

2. Centralized control of labor relations;

3. Common management; and

4. Common ownership as financial control." (NLRB, 21st Annual Report, pp. 14-15, quoted at Abbati Farms, 3 ALRB No. 83, p. 17 of Investigative Hearing Officer's Decision. The Board specifically affirmed "the rulings, findings and conclusions of the Investigative Hearing Examiner." 3 ALRB No. 83,p. 2.)

The approach of Louis Delfino and Abbati Farms was followed by the Board in Signal Produce Company, Brock Research, Inc., 4 ALRB No. 3, and Perry Farms, 4 ALRB No. 25.

In Rivcom Corporation and Riverbend Farms, Inc., 5 ALRB No. 55, the Board reiterated this approach to the single employer issue:

"We conclude that Rivcom and Riverbend constitute a single, integrated enterprise at the Rancho Sespe property. Factors to be considered in establishing such status are the interrelation of the operations, common management of

business operations, centralized control of labor relations, and common ownership. No single factor is determinative and we will not mechanically apply a given rule in making this determination." (5 ALRB No. 55, p. 4)

IN Rivcom the Board also noted that:

"Under NLRA precedent, a finding of single-employer status does not require a showing of control over labor relations at the local level, but may instead be based upon evidence of control and a centralized labor relations policy at the top-management level." (5 ALRB No. 55, 6)

The Board in Rivcom also pointed out some unique factors involving agriculture. Because of the prevalent use of labor contractors the Board held that "In view of the unique role of the farm labor contractor in agricultural employment, less weight is accorded to the factor of direct control over labor relations than in the industrial setting" (5 ALRB No. 55).

In the recent case of John Elmore Farms, 8 ALRB No. 20, the Board again reaffirmed its basic approach to the issue of a single employer:

"The focus in a joint-employer case is whether two or more business entities demonstrate a sufficient degree of interrelatedness on a number of levels to be considered a single employer under the Act, Rivcom Corporation (Aug. 17, 1979) 5 ALRB No. 55; Abatti Farms (Nov. 18, 1977) 3 ALRB No. 83." (8 ALRB No. 20, p. 5)

In John Elmore Farms, supra, the Board dealt with a situation in which the original management ostensibly turned over operation of the business to another entity. The Board determined that "the operational control and business purposes of the entities [were] so molded that they cannot be regarded as separate enterprises" (8 ALRB No. 20, p.8, citation omitted). The Board also noted that "the relative inexperience of the manager" of the new entity gave rise "to an inference ... of the continued participation of original management in the operations" of the new entity (8 ALRB No. 20, p. 8, citations omitted).

Using the overall approach and guidelines of Abatti Farms and the other cases cited above, I turn to the findings o£ fact concerning the relationship between Mr. Dudley M. Steele and Tex-Cal Land Management, Inc.

B. Findings of Fact

In examining the "degree of interrelatedness" (John El-more Farms, supra) between Mr. Steele[57] and Respondent, I find that much of the evidence is documentary, and most of the factual issues are not disputed. The parties primarily disagree on the interpretation and legal significance of the facts.

Mr. Steele was the president of Respondent until 1979, when he resigned. He was Respondent's president at the time

[57]References to "Mr. Steele" in this Section are references to Dudley M. Steele. Any references to Mr. Steele's son, Dudley M. Steele, will be given as "Randy Steele."

of the Union's certification in 1977. It is undisputed that since 1979 Mr. Steele has not held any official position with Respondent. It is also undisputed that all stock in Respondent is owned by Mr. Steele's son, Randy Steele (RT XXXIII: 5-7). Randy Steele is president and chief executive officer of Respondent.

Mr. Steele and Respondent have offices in the same building. They share the services of Ms. Betty Kruger, who is Mr. Steele's secretary and also secretary for Respondent (RT XXXIII:33; GCX:55). Mr. Steele and Respondent also have a common legal representative in Mr. Robert McDonald, Esq. (RT XXXITI:42-43; GCX:20, 21, 55, 56). Mr. McDonald represents Mr. Steele in a number of areas in which Mr. Steele's companies have relationships (discussed below) with Respondent. At the same time, Mr. McDonald was one of the incorporators of Respondent (GCX:20), and is an agent for service of process for Respondent (GCX:55). Mr. McDonald has also leased real property of his own to Respondent (RX:59).

Mr. Caravantes (Respondent's Director of Industrial Relations) testified that in the office building shared by Mr. Steele and Respondent, Mr. Steele uses Respondent's photocopying machine (RT 111:46), Respondent and Mr. Steele share a common reception area (RT XI:45). Mr. Caravantes has free access to Mr. Steele's office (RT XI:45-47), and Mr. Caravantes orders unauthorized people out of Mr. Steele's office (RT XI:44-47).

Mr. Steele has appointed Randy Steele, through a power of

attorney (GCX:48), as Mr. Steele's "attorney in fact." The power of attorney authorizes Randy Steele:

> "(1) To collect, receive and receipt for any and all sums of money or payments due, or to become due to me; ... and to deposit in my name in any bank or banks any and all monies collected or received for me and to make withdrawals therefrom; and to pay any and all bills, accounts, claims and demands now or hereafter payable by me.
>
> (2) To contract for, purchase, receive, take possession of, lease, rent, sell, release, convey, assign, mortgage, convey by way of deed of trust, and otherwise hypothecate lands, tenements, hereditaments and other real property, or any interest therein, of every kind and description;
>
> • • •
>
> (4) To act for me in any and all ways in any business in which I now am, or have been, or may be, engaged or interested in any way;
>
> • • •
>
> (6) To attend meetings of stockholders of all corporations in which I own stock, with full power to vote and act for me at any such meetings; and to exercise in person or by proxy any and all rights which I may have in connection with any such stock." (GCX:48) Mr. Randy Steele testified that this power of attorney,

executed in 1979, was still in effect (RT XXXIII:79-80).

Mr. Steele owns a number of companies which do business with Respondent. Mr. Steele owns Tex-Cal Land, Inc., a Texas corporation which leases real property to Respondent for farming operations (GCX:27, 28, 29, 31, 37; RX:59; RT XXXIII: 8-9). Tex-Cal Land, Inc. also owns the cold storage facilities where Respondent stores its grapes (RT XXXIII:26). Mr. Steele owns Tex-Cal Sales Co. (RT XXXIII:23). Tex-Cal Sales is the broker and a marketer for Respondent's grape crop (RT XXXIII:23). Mr. Steele is a co-owner of Styro-Tech, Inc., the company from which Respondent buys its grape-packing boxes (RT XXXIII:80). Mr. Steele is chief executive officer and director of Tex-Cal Supply Co (GCX:56). Tex-Cal Supply Co. services Respondent's farming equipment, buys parts for Respondent's farming equipment, overhauls Respondent's farming equipment for Respondent (RT XXXIII:40). Mr. Steele and Randy Steele were partners in Diamond S. Leasing Co. (GCX: 39). Respondent leases its farming equipment from Diamond S. Leasing Co. (RT XXXIII:81). The partnership between Mr. Steele and Randy Steele ended in 1980 when Randy Steele assumed ownership of Diamond S. Leasing Co. (RT XXXIII:69-71, 81 et. seq.).

Mr. Steele, through the above companies, owns a number of real properties which are leased to Respondent for farming operations (GCX:30, 32, 34, 36). It was stipulated that properties called Ranches 48 and 49 were owned by Mr. Steele and leased to Respondent for farming (RT XXXII1:77-78). The lease (RX:59) provides that Respondent has the right to lease and farm the properties for "terms of not less than ten years

from July 1, 1977, with options of renewal" (RX:59). However it is undisputed that in 1980 and 1981 Mr. Steele sent Respondent letters stating that Respondent would not be allowed to lease those properties beyond 1980 and 1981, and that Respondent complied with Mr. Steele[1]s unilateral abrogation of the terms of the lease (RT 11:135-137).

Respondent introduced marketing agreements between Respondent and Tex-Cal Sales Co. (owned by Mr. Steele) (RX:63, 64, 65). A comparison of these agreements with the marketing agreement between Respondent and Tenneco West, Inc. (RX:61), a company not involved with Mr. Steele, shows some differences. One difference is that Paragraph 8 of the Tex-Cal Sales to "extend credit to any buyer" in marketing Respondent's crops. In the Tenneco lease, paragraph 8 allows Tenneco to "extend credit to any buyer," but it also stipulates that "in so doing [Tenneco] guarantees payment to [Respondent]" (GCX: 61). Another difference is that the Tenneco agreement gives to Tenneco a security interest in the crops grown by Respondent, to protect Tenneco for costs paid by Tenneco for the account of Respondent in the process of marketing the crop (GCX:61, paragraph 13). Tex-Cal Sales did not take out a similar security interest for the crops it marketed.

Evidence at the hearing showed that Respondent used packaging labels that were the same as the labels used by Mr. Steele as owner of Tex-Cal Land, Inc. (RT XXXIII:24-25; GCX:23, 49). The evidence also showed that Mr. Steele's Tex-Cal Sales Co. took out an advertisement (GCX:49) in a

trade paper advertising "Grapes From Our Delano Vineyards. Buddy Steele."[58] This advertisement showed six labels for grapes, which Respondent's Vice President testified were also the labels used by Respondent (RT XXXIII:25). Mr. Bartholomew, Respondent's Vice President, testified that Tex-Cal Sales was the only broker authorized to use Respondent's labels (RT XXXIII:23-24).

There was substantial evidence to show that Mr. Steele exercised some control over Respondent's farming operations. Mr. Joe Medina, Jr., Respondent's harvest supervisor, testified that Mr. Steele was consulted about harvest decisions before Mr. Medina acted:

"Q. Would you notify anyone other than the people you've been talking about ... as to when a certain block was ready for picking in the harvest of last year (1982)?

A. Well, sometimes we had to let Bud know on that.

Q. Buddy Steele?

A. Right, during the harvest, we'd have to let him know when we're going to start picking Thompson's or, you know, we had to check with him, because like I said, he takes care of that part.

Q. Okay, so he takes care of actually giving, when you would go to Buddy last year in the harvest, you'd tell him this block of Thompson's is ready, then he'd tell you, send in these crews to go and pick. Is that how it would work?

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[58]As noted previously, Mr. Steele is commonly known as "Buddy Steele."

A. Yeah, if he needed, if a certain block was ready to go, we'd check with him on it, and if he needed that certain variety or something, we'd surely go in there and get it for him.

Q. Do you recall when the first time was that you checked with Bud Steele about that.

A. Yeah, it was about, the first time was I remember was 1980-81 and this year.

Q. Well let's talk about last year's. [The question refers to the 1982 harvest.]

A. Last year I did check with them. He did consult me on that, certain grapes that he needed and things like this.

Q. Let's take the first occasion. I guess the first grapes that you harvested were when? About July, down in the Arvin area?

A. Right. That's the Flame Seedless area.

Q. Do you recall the conversation you had with Buddy Steele when you went and consulted him that the Flame Seedless in Arvin were ready to be picked?

A. Right, yeah, I did.

Q. What exactly did you tell him?

A. I told him that the Flames were ready to go, and I thought they'd be all right picking them now.

Q. And what did he say?

A. He told me to go ahead and pick them, that he needed Flames, so he told me to go ahead and pick them.

Q. Then you consulted them when, I guess the Cardinals are the next grapes ready?

A. Yeah, the Cardinals, Exotics. See, we usually when I go in the office or something, I let him know that the Exotics were ready. We work real close together during the harvest."

(RT XXIII:14-15) Mr. Medina further testified:

Q. Where would you discuss [harvest procedures with Mr. Steele]? Would you discuss it at [Respondent's] office?

A. Yeah, at [Respondent's] office, yeah."

(RT XXIII:15-16)

Mr. Medina also testified that Mr. Steele sometimes came out to the fields to talk with Mr. Medina about the harvest (RT XXIII:16) .

Mr. Medina specifically stated that he checked with Mr. Steele about harvest procedures at Ranches 47 and 81 (RT XXIII:17). Respondent's payroll records (GCX:83) show that these were ranches which were farmed by Respondent's crews. The leases and marketing agreements between Respondent and the various companies from whom it leased property or who marketed its crops give Respondent complete control over harvest and farming operations. (See, e.g., RX:59: "[Respondent has all rights to harvest, market, borrow against, encumber and otherwise deal with" the leased property.)

Mr. Medina's testimony concerning his supervision by Mr. Steele was uncontradicted.

There was also evidence which showed that Mr. Steele was involved in Respondent's labor relations policies. In Section VI of this Decision, supra, I have found that when hundreds of Respondent's employees picketed Respondent's office in June and August 1981, to demand that Respondent sign a contract, Mr. Steele, in the presence of Mr. George Johnston, photographed the workers on the picket lines. Further, Mr. Steele attended a grievance meeting between the Union and Respondent in 1982 (RT VI:68; XV:22; XXXVI:36).[59]

It is also undisputed that in August 1982 workers picketed Mr. Steele's residence. I credit the testimony that Mr. Steele photographed workers at that picket line and subsequently turned the photographs over to Mr. Johnston and Mr. Caravantes (RT VI:70-72). The picketers at Mr. Steele's residence were demanding that Respondent sign a contract with the Union (RT VI:66-67), and went to Mr. Steele's house because they considered him one of the "higher ups" in Respondent's management (RT VI:67).

I turn now to an examination of the legal effect all of the above findings of fact, in light of the standards set out in the first part of this Section.

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[59]There was testimony that during an angry exchange at the grievance meeting Mr. Steele cursed the Union representatives and stated that Respondent was his company. However, I do not rely on that alleged statement by Mr. Steele in making my findings and conclusions as to his status as a joint employer. I do find relevant, as discussed infra, the fact that he attended the grievance meeting.

C. Conclusions of Law

1. Due Process.

Before discussing my conclusions concerning Mr. Steele's status as a single, integrated employer with Respondent, I first turn to Mr. Steele's motion that he be severed and dismissed from the complaint on the grounds that it violates Mr. Steele's constitutional right to due process of law to hold him liable for any unfair labor practices, including refusal to bargain, because "he has never been afforded the opportunity to participate in any certification proceedings, as an employer, before this Board. Neither has he, as an employer, been the recipient of any request, duty, or notice to* Bargain from the UFW" until the instant unfair labor practice charges were filed. Mr. Steele relies on the case of Alaska Roughnecks and Driller Association v NLRB, 555 F. 2d 732 (9th Cir. 1977), cert, denied, 434 U.S. 1069, as support for his motion.

In Alaska Roughnecks the court held:

"Since there must be at least two parties to a bargain and to any negotiations for a bargain, it follows that there can be no breach of the statutory duty [to bargain] by the employer ... without some indication given to him by [the employers] or their representatives of their desire or willingness to bargain.

• • •

[M]obil was neither named as an employer [during

> certification of the Union] nor given an opportunity to object as permitted [by NLRB regulations].
>
> • • •
>
> [T]he representation proceeding, not the unfair labor practice proceeding, is where employer status should be litigated. Because Mobil had no opportunity to participate in the representation proceeding, it was not accorded due process." (555 F. 2d at 555-556. Citations omitted.)

This matter appears to be one of first impression for the Board, and I find that there are a number of differences between the instant case and Alaska Roughnecks. In the latter case, the alleged joint employer was never given an opportunity to contest its involvement as a joint employer during the certification proceeding, and that was the crux of the due process holding of the court. In the instant case, it is undisputed that Mr. Steele was Respondent's president at the time of. the certification proceeding in 1977. Mr. Steele resigned in 1979, but it is the General Counsel's theory that he has retained substantial interrelatedness with Respondent to continue to be a "single integrated" entity within the meaning of the Act. In Alaska Roughnecks the court stated that "due process necessitates notice and a meaningful opportunity to be heard" (555 F. 2d at 735, original emphasis). It noted that the situation would have been different "had Mobil either intervened in [the] labor dispute with the union ... or been approached by the union earlier ..." (555 F. 2d

at 737).

In the instant case, Mr. Steele was Respondent's president during the certification proceeding. Further, I have found that Mr. Steele directly involved himself in the Union's 1981 picket line and in a grievance meeting. It was also undisputed that he was picketed by the Union in 1982, with the demand that he sign a contract, and thus was given an indication by the Union prior to the filing of the unfair labor practice charges of the employees' "desire or willingness to bargain."

All told, I find that Mr. Steele had sufficient involvement in the labor issues and prior proceedings so that he was given meaningful notice that the Union considered him a part of Respondent's alleged unfair labor practices. For these reasons, I find reliance on Alaska Roughnecks to be misplaced, and I find that Mr. Steele was not denied due process of law. Accordingly, I deny Mr. Steele's motion to dismiss the proceedings against him.

2. Single Employer Status.

Under the standards of Abatti Farms, John Elmore Farms, and the other cases cited above, I find that there is "a sufficient degree of interrelatedness on a number of levels" for Mr. Steele "to be considered a single employer [with Respondent] under the Act." John Elmore Farms, supra, 8 ALRB No. 20, p. 5.

Respondent in its Post-Hearing Brief asserts that the

General Counsel has not shown any involvement on the part of Mr. Steele with Respondent other than normal business relationships commonly found among business entities.[60] However, this assertion is clearly untenable. One of the striking things about Respondent's business is that any aspect of Respondent's operations which is examined soon reveals Mr. Steele's presence. Much of Respondent's land is leased to it by Mr. Steele's companies. Mr. Steele's companies service Respondent's equipment and have in the recent past provided that equipment. Mr. Steele's companies furnish the cold storage facilities for Respondent's grapes, sell the packing boxes used by Respondent, broker and market Respondent's crops, and use Respondent's labels as its own.

The business documents between Mr. Steele's companies and Respondent give indications of less than arms-length dealings. Mr. Steele was able to abrogate long-term provisions, and had marketing agreements Respondent had with other brokers.

Mr. Steele's companies advertised in a manner which equated its operations with Respondent's. Mr. Steele's office arrangements showed a fluid use of Mr. Steele's office by Respondent's management and a use of Respondent's offices by Mr. Steele. Despite numerous business dealings between Mr. Steele's companies and Respondent, which under normal

[60] Mr. Steele did not testify at the hearing and did not file a brief. Respondent in its Post-Hearing Brief argued that Mr. Steele should not be held liable as a joint employer.

arms-length business arrangements would call for careful determinations of the relative needs of both companies, and which, because of the close family relationships, would seem to require careful attention to possible conflicts of interest, the same lawyer represented both Mr. Steele's companies and Respondent in the business arrangements, and Mr. Steele signed a sweeping power of attorney allowing his son to act on behalf of Mr. Steele, thus potentially making Randy Steele the major party on both sides of the business arrangements.

Under the Abatti Farms and John Elmore Farms standards, the above factors clearly show an "interrelation of operations" (Abbatti Farms).

Turning to the other standards considered by the Board, I have found that although Mr. Steele did not have any legal authority over Respondent's farming operations by virtue of position or contract, he in fact exercised actual control over farming operations, instructing Respondent's harvest supervisor on harvest decisions.

I have also found that Mr. Steele inserted himself into Respondent's labor relations, playing a role in the picketing incidents and in a grievance meeting.

As noted, the Board has been careful to warn that single employer issues must be examined on a case-by-case basis. The facts of different cases will rarely mesh exactly, and the Board has cautioned that "patterns of ownership and management are varied and fluid." Louis Pelfino Co., supra, 3 ALRB No. 2, p. 3. Here I have found that there is no direct

financial ownership of Respondent's stock by Mr. Steele. However, even though Mr. Steele resigned from formal authority over Respondent in 1979, he and his companies have remained intertwined with all aspects of Respondent's business. His presence in the office, in the fields, and the various legal arrangements between his companies and Respondent, show a great deal more involvement than any typical arms-length business relationship would indicate. From an evaluation of all the factors, I find and conclude under the cases cited above, that Mr. Dudley M. Steele, by virtue of the interrelationships of his operations with Respondent, the exercise of control over Respondent's farming operations, the involvement in Respondent's labor relations policy, and the fluid nature of the relationship of Respondent's management and agents with Mr. Steele's operations, is a single integrated employer with Respondent for the purposes of the Act.

XV. REMEDY

Having found that Respondent has engaged in certain unfair labor practices within the meaning of Section 1153 (a), (c) and (e) of the Act, I shall recommend that it cease and desist from such practices and take certain affirmative action designed to effectuate the policies of the Act.

In considering the remedy in this case, I find that the make-whole remedy is clearly appropriate for the violations of Section 1153 (e) of the Act. The facts do not show one or two isolated, technical violations, but rather an entira pat-

tern of incidents for two years, all the with effect of bypassing or undercutting the Union. Respondent's anti-Union animus and lack of good faith has been found throughout these incidents. Accordingly, I find the make-whole remedy applicable. Tex-Cal Land Management, Inc., 8 ALRB No. 85; George Arakelian Farms, 8 ALRB No. 36; Lu-Ette Farms,Inc., 8 ALRB No. 91; Ruline Nursery, 8 ALRB No. 105.

Upon the basis of the entire record, the findings of fact and conclusions of law, and pursuant to Section 1160.3 of the Act, I hereby issue the following recommended Order:

ORDER

Respondent, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Unilaterally changing its hiring practices by failing to give notice to the United Farm Workers of America, AFL-CIO (UFW) of new hires;

(b) Unilaterally subcontracting bargaining unit work to another agricultural employer or contracting out bargaining unit to a labor contractor, without prior notice to and bargaining with the UFW about such changes;

(c) Failing to timely pay benefits and dues under collective bargaining agreements with the UFW;

(d) Suspending, disciplining, or otherwise discriminating against any agricultural employees because of their union activities and/or protected concerted activities;

(e) Unilaterally transferring employees to different crews;

(f) Unilaterally making changes in working conditions, and/or unilaterally making changes in farm operations which affect the hours or conditions of work for its employees, without prior notice to and bargaining with the UFW about such changes;

(g) Delaying the start of cultural seasons, hiring excessive outside crews, or in any other manner manipulating its cultural practices to discriminate against its agricultural employees because of their union activities and/or protected concerted activities;

(h) Failing or refusing to meet and bargain collectively in good faith, as defined in Section 1155.2(a) of the Act, on request, with the UFW as the certified exclusive collective bargaining representative of its agricultural employees;

(i) In any like manner interfering with, restraining, or coercing agricultural employees in the exercise of the rights guaranteed in Section 1152 of the Act.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Act:

(a) Make whole Lydia Rodriguez, Pascual Magallanes, Roberto Holguin, Hermenegildo Melendez, Antonia Hernandez, Esperanze Magallanes, and Teresa Realsola (Reazola) for all losses of pay and other economic losses they have suffered as a result of their suspension in August 1982; such amounts to

be computed in accordance with established Board precedents, plus interest thereon computed in accordance with the Board's decision and order in Lu-Ette Farms, Inc., 8 ALRB No. 55.

(b) Upon request of the UFW, the certified collective bargaining representative of Respondent's agricultural employees, rescind any and all unilateral changes instituted by Respondent with respect to hiring practices, transfer of employees, swamping trucks, employment applications, and assignment of harvesting, pruning, tying, tractor, irrigation and swamping work which was performed by its employees, members of the bargaining unit prior to July 1981.

(c) Make whole all of its present and former agricultural employees for all losses of pay and other economic losses they have suffered due to loss of work, such amounts to be computed in accordance with established Board precedents, plus interest thereon computed in accordance with the Board's decision and order in Lu-Ette Farms, Inc., 8 ALRB No. 55, as a result of the following actions by Respondent;

(1) Reducing work for its regular harvest crews in the 1981 harvest due to hiring additional crews;

(2) Reducing work for its regular pruning crews in the 1982 pruning and tying season due to starting late and hiring additional crews;

(3) Subcontracting or contracting out of swamping work, irrigation and miscellaneous work, and tractor work, in 1981 and 1982;

(4) Eliminating swamping trucks in 1982;

(5) Reducing work for its regular harvest crews in the 1982 harvest due to conversion of vineyards to raisins;

(d) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive collective bargaining representative of its agricultural employees regarding a collective bargaining agreement and/or any proposed changes in its agricultural employees' working conditions and, if an understanding is reached, embody such understanding in a signed agreement.

(e) Make whole all of its present and former agricultural employees for all losses of pay and other economic losses suffered by them as a result of its failure and refusal to bargain in good faith with the UFW, such amounts to be computed in accordance with Board precedents with interest thereon computed in accordance with the Board's decision and order in Lu-Ette Farms, 8 ARLB No. 55, and the period of said obligation shall extend from June 7, 1982, until the date on which Respondent commences good faith bargaining with the UFW which results in either a contract of a bona fide impasse.

(f) Preserve and, upon request, make available to the Board and its agents, for examination, photocopying, and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necesary to a determination, by the Regional Director, of the make-whole amounts due under the terras of this Order.

(g) Sign the Notice to Agricultural Employees attached hereto as Appendix. A and, after its translation by a Board agent into all appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereinafter.

(h) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent at any time during the period from July 1, 1981 until the date on which the said Notice is mailed.

(i) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property for 60 days, the time(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered, or removed.

(j) Provide a copy of the attached Notice to each agricultural employee hired during the 12-month period following the date of issuance of this Order.

(k) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its agricultural employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or

their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees in order to compensate them for the time lost at this reading and during the question-and-answer period.

(1) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply therewith, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

It is further recommended that the allegations that Respondent violated Section 1153 (e) of the Act by bargaining directly with employees, and that Respondent violated Section 1153 (d) of the Act by suspending seven employees because of their ALRB activities, be dismissed.

Dated: November 2, 1984

BEVERLY AXELROD
Administrative Law Judge

Appendix A

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Regional Office of the Agricultural Labor Relations Board (ALRB or Board) by the United Farm Workers of America, AFL — CIO (UFW), the certified bargaining representative of our employees, the General Counsel of the ALRB issued a complaint which alleged that we, Tex-Cal Land Management, Inc., had violated the law. After a hearing at which all parties had an opportunity to present evidence, the Board found that we violated the law by suspending seven employees in Crew 64 because of their union activities, by unilaterally changing working conditions without notifying or bargaining with the UFW, by contracting and subcontracting our swamping, irrigation, tractor and other work in 1981 and 1982, by hiring additional crews in the 1981 harvest and 1982 pruning seasons, which resulted in a loss of work for our regular crews, by unilaterally changing our employment application form, by unilaterally transferring employees to different crews, by hiring workers without first notifying the UFW, by converting table grape vineyards to raisins without first notifying and bargaining with the UFW, by refusing to pay benefits under the 1981-82 collective bargaining agreement with the UFW, and by refusing to bargain in good faith with the UFW for a new contract. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

We also want to tell you that the Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because it is true that you have these rights, we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

Especially:

Appendix A (continued)

WE WILL NOT subcontract or contract out bargaining unit work or otherwise make any other unilateral change in our agricultural employees' wages, hours, or working conditions without prior notice to and bargaining with the UFW.

WE WILL restore and reassign to our employees the harvesting, pruning, swamping, tractor, irrigating, and other work which we illegally contracted out or subcontracted out in 1981 and 1982.

WE WILL reimburse with interest all of our present and former employees who suffered any loss in pay or other money losses because we unlawfully contracted or subcontracted out their work, or unlawfully reduced their work by hiring additional harvest crews in 1981 and additional pruning crews in 1982.

WE WILL NOT discharge, suspend, or otherwise discriminate against any agricultural employee in regard to his or her employment because he or she has joined or supported the UFW or any other labor organization, or has participated in any other protected concerted activities.

WE WILL NOT transfer employees to different crews without first bargaining with the UFW.

WE WILL reimburse with interest Lydia Rodriguez, Hermenegildo Melendez, Pascual Magallanes, Esperanza Magallanes, Roberto Holguin, Antonia Hernandez, and Teresa Reazola, for any loss in pay because we illegally suspended them in August 1982.

WE WILL make all payments to medical plans, health plans, pensions, and other provisions in any contracts we sign with the UFW.

WE WILL bargain in good faith with the UFW for a new contract.

Dated:_____

TEX-CAL LAND MANAGEMENT, INC.

By: _____
Representative Title

If you have a question about your rights as farm workers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 627 Main Street, Delano, California 92315. The telephone number is 805-725-5770.

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

Appendix B

TABLE OF WITNESSES

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Rogelio Ayala, Manuel	XIV:35-46
Bado, Jimmy	XXIV:30-48
Bartholomew, Robert G,	XXXVII:138-154, XXXVIII:1-41
Caravantes, David	XXXIII:4-64
	II:46-150, III:7-120, IV:18-91,
	V:19-73, XI:9-100, XLVI:24-71,
Casades, Rosa	103-173, XLVII:16-94
Cervantes, Juan	XXII:44-104
Cueller, Ed Davila,	XXXVI:11-157, XLVII:102-116
Antonio Espinoza,	XXI:3-44
Erasmo Espinoza,	XIV:48-75
Margaret Feliscan,	XX:2-66, XXXIX:6-23
Mary Fernandez,	XXXVIII:73-107, XLVII:117-118
Eulala Friedmann,	XXXVIII:115-140
David Galindo,	XV:107-117, XVI:I-7
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	VI:139-152, VII:12-80
Gibson, Harold	XLI:2-40
Gonzalez Villaneuva, Mateo	XXXI:68-79
Guerra, Jose	XXXI:55-66
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TABLE OF WITNESSES

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Johnston, George	VIII:9-128, IX:1-125, X:7-126, XI:110-151, XIX:55-150, XXXIV: 16-167, XXXV.7-23, 106-152, XL:2-132, XLI:41-139, XLII:72-105, XLIII:l-36, XLIV:1-119, XLV:l-62, 88-99, XLVII:132-137
Lara, Leonardo	11:18-45, XXIII:99-116
Lefler, Lemuel	XIX:ll-54, 50-144
Lopez, Alejandro	XV:3-105, XXXI:89-90, XXXIX:24-26, XLVII:126-131
Lopez, Candido Lopez, Matilda Haddock, Ben	XXXVIII:46-71
Martinez, Guadalupe	XVI:8-39
Medina, Joe Jr.	XXXVII:2-95
Medina, Jose Sr.	XXX:3-48
Melendez, Hermenegildo	XXIII:4-96, XLIII:38-80, XLV:64-88
Mestas, Alberto Miller, Deborah	XXXVIII:141-146
	XVII:66-108, XVIII:1-61
	1:52-55, 11:4-8, XLVII:2-5
	XIX:2-9, XXV:2-150, XXVI:1-137, XXVII:20-142, XXVIII:2-168, XXIX:4-28, XXX:145-150, XXXII:1-123

Appendix B (continued)

TABLE OF WITNESSES

Witness	Transcript of Testimony
Moore/ John P.	XLVI:2-15
Obbink, Bruce	XLIII:82-89
Orosco, Jorge	VI:45-137, XX:67-81, XXXVIII: 109-114, XLVII:120-126
Penalber, Carmen Ramirez,	XXXVI:8-11
Pedro	XII:4-121
Reyes, Silvano Rocha	71:92-125, XXI:45-134, XXII:1-42
Rodriquez, Juan Manuel	XIII:17-53
Rodriquez, Lydia Sahagun,	XIII:55-114, XIV:7-31
Joseph	XVIII:62-114, XXXI:92-115
Sala, Heberto	XXX:150-157, XXXI:2-31, XLVI:15-23
Sanchez, Luis	XVI:40-69, X7II:2-62
Sosa, Conrado	XLII:2-72
Steele, Dudley Randolph	XXXIII:66-92
Steele, Loreen	XIII:2-13
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Viramontes Guerrero, Samuel.	VII:84-131
Winterowd, David Kent	XXVII:16-19, XXXV:27-105

Appendix

GENERAL COUNSEL'S EXHIBITS

Ex. #	Marked For I.D.	Admit. Evidence	# Pages	Date	Description
CGX:1	Pre-hear.	IV:7	5	6/6/82	Subponea duces tecum. 852-
CGX:2	Pre-hear.	IV:7	5	6/6/82	Subponea duces tecum. 853-
CGX:3	Pre-hear.	IV:7	5	6/6/82	Subponea duces tecum. 854-
CGX:4	Pre-hear.	IV:7	5	6/6/82	Subponea duces tecum. 855-
CGX:5	Pre-hear.	IV:7	5	6/6/82	Subponea duces tecum. 856-
CGX:6	Pre-hear.	IV:7	7	6/6/82	Subponea duces tecum. 857-
CGX:7	Pre-hear.	IV:7	9	7/14/82	Motion to comply with subpoens.
CGX:8 (1A-1W)	II:2	II:3			Formal Exhibits.
CGX:8 (1A-1Y)	VIII:3 XXXI:32	XXXI:32			Formal Exhibits.
CGX:9	II:21	III:3	1		Photo of machinery.
CGX:10	II:70	III:2	33	5/81-11/81	Payroll summary.
CGX:10A	III:1	III:2	1		Payroll codes.
CGX:10B	III:1	III:2	1		Payroll codes.
CGX:11	II:70	III:2	38	5/80-11/81	Payroll codes.
CGX:12	II:70-71	II:74-75	1	1979-80	Crew Bosses list.
CGX:13	II:70-71	IV:7-8	1	8/81	Crew Bosses list.
CGX:14	II:70-71	IV:7-8	1	3/22/82	Crew Bosses list.
CGX:15	II:94-95	Withdrawn III:1			
CGX:16	II:95	III:2	237	1981	Lefler Labor invoices.
CGX:17	II:132	III:135	1	4/1/81	Letter: Marshall Flatt to Randy Steele.
CGX:18	II:132	III:4	1	12/19/80	Letter: D.M. Steele to Tex-Cal.
CGX:19	II:132	III:4	1	5/20/81	Letter: D.M. Steele to Tex-Cal.

Appendix

GENERAL COUNSEL'S EXHIBITS

Ex. #	Marked For I.D.	Admit Evidence	# Pages	Date	Description
GCX:20	III:4	III:5	7	12/26/73	Tex-Cal Articles of Incorporation.
GCX:21	III:5	III:5-6	1	9/7/82	Appearance form for Robert J.
GCX:22	III:6	IV:8	4	8/19/82	Respondent's Motion to Sever
GCX:23	III:9	IV:8	1		Lable: "David S."
GCX:24	III:43	III:48	1		Diagram of Tex-Cal offices.
GCX:25	III:56	III:65	2	8/13/82	Leaflet:"The Truth of Tex-CalLand Management,
GCX:26	III:92	Withdrawn XXIII:1	38		Flat maps of Tex-Cal.
GCX:27	IV:1	IX:41A	5	1976-77	Grant Deeds.
GCX:28	IV:1	IX:41A	4	1977	Grant Deeds.
GCX:29	IV:1	IX:41A	4	1977	Grant Deeds.
GCX:30	IV:1	IX:41A	5	1978-79	Grant Deeds.
GCX:31	IV:1	IX:41A	3	1977	Grant Deeds.
GCX:32	IV:1	IX:41A	4	1976	Grant Deeds.
GCX:33	IV:1	IX:41A	3	1975	Grant Deeds.
GCX:34	IV:1	IX:41A	2	1978	Grant Deeds.
GCX:35	IV:1	IX:41A	5	1978	Grant Deeds.
GCX:36	IV:1	IX:41A	4	1978	Grant Deeds.
GCX:37	IV:1	IX:41A	5	1977	Grant Deeds.
GCX:38	IV:1	V:113	2		Quitclaim Deeds.
GCX:39	IV:2	IX:41A	1	10/28/80	Fictitious Business
GCX:40	IV:2	IV:5-6	1	5/12/80	Payroll sheet.
GCX:41	IV:2	IX:41A	4	10/6/81	Leaflat: "To Out Employees"
GCX:42	IV:25-26	V:2	1	1/29/82	Letter : David Caravantes to U.F.W

Appendix C (continued)
GENERAL COUNSEL'S EXHIBITS

Ex. #	Marked For I.D.	Admit. Evidence	# Pages	Date	Description
CGX:43	IV:78	XI:109			Photograph of truck.
CGX:44	IV:78	XI:109			Photograph of truck.
CGX:45	IV:78	XI:109			Photograph of sign.
CGX:46	IV:78	XI:109			Photograph of sign.
CGX:47	IV:78	XI:109			Photograph of packing table.
CGX:47A	XV:III:64	XVIII:67			Photograph of packing table.
CGX:47B	XV:III:64	XVIII:67			Photograph of packing table.
CGX:48	IV:88	IX:41A	3	3/15/79	Power of attorney by Dudley M. Steele, Jr.
CGX:49	V:1	V:2	1	8/14/82	Advertisement from "The Packer."
CGX:50	V:20	V:23	183	1981	Renteria Farm Labor Logs & Invoices.
CGX:50A	XIV:32	Withdrawn XVII;1		10/81	Renteria Invoices.
CGX:51	V:45	V:48	132	1980	Renteria Farm Labor Logs & Invoices.
CGX:52	V:90	V:91	70	1981-82	Collective Bargaining Agreement between Tex-Cal & UFW.
CGX:53	V:91	XI:109			Photograph of truck.
CGX:54	VI:137	XI:109			Photograph of truck.
CGX:55	VII:64	IX:41A	1	4/16/82	Statement by Domestic Stock Corp. for Tex-Cal.
CGX:56	VII:64	IX:41A	1	10/23/81	Statement by Domestic Stock Corp. for Tex-Cal.
CGX:57	VII:64	IX:41A	1	6/4/82	Check stub from Efrem Vargas.
CGX:58	VII:97	VI:105	1		Diagram of intersection of Woolomes & Browning.
CGX:59	VIII:105	VII:105	1		Diagram of Garcia & Potterville.

Appendix C (continued)
GENERAL COUNSEL'S EXHIBITS

Ex. #	Marked For I.D.	Admit. Evidence	# Pages	Date	Description
CGX:60	VI:107	VII:107	1		Diagram of field at roads 192 & 24.
CGX:61	VII:51	XI:107	2	9/14/82	Article from Delano Record.
CGX:62A	VIII:68	VIII:88			Photo of State car.
CGX:62B	VIII:68	VIII:88			Photo of State car.
CGX:62C	VIII:68	VIII:88			Photo of State car.
CGX:63	VIII:68	Withdrawn XIII:15			Cassette tape re: ALRB agent Trespess.
CGX:64	IX:39	XI:106	1	10/19/82	Mailgram: David Caravantes to ALRB.
CGX:65	IX:97	IX:106	4		"Article 10: Health & Safety".
CGX:66	IX:107	IX:107	6	9/13/81	Payroll labor distribution Sheets.
CGX:67	X:4-5	X:95	102	6/16/82	Tex-Cal Seniority lists.
CGX:68	X:12	X:95	20	9/17/82	Computer list; employee crew And name.
CGX:69	X:91	X:94	1	7/13/82	Latter: Jaun Carvantes to David Caravantes.
CGX:70	X:96-97	X:120	1	6/13/81	Crew size list.
CGX:71	X:97	X:116	1	7/22/81	Letter: George Johnston to Ben Maddock.
CGX:72	X:121	X:106	1	8/27/81	Mailgram: David Carvantes to Ben Maddock
CGX:73	XI:61	X:106	4	9/21/82	Criminal complaint: Cal. v Albert Mestas.
CGX:74	XI:71	X:76	1	8/25/82	Kern Country Sheriff citation For H. Sala & Sahagun.
CGX:75	XI:71	XI:105	3	8/25/82	Kern Country Sheriff report.
CGX:76	XI:79	XI:105	1	8/25/82	Telegram: David Caravates to Lawrence Alderetti.
CGX:77	XI:83	XI:105	2	8/25/82	Mailgram: Luis C. Lopez to David Caravantes.

Appendix C (continued)
GENERAL COUNSEL'S EXHIBITS

Ex. #	Marked For I.D.	Admit. Evidence	# Pages	Date	Description
CGX:78	XI:88	XI:105	1	8/27/82	Mailgram: David Caravantes to Luis Lopez
CGX:79	XI:110	XI:136	1	8/16/82	Letter: George Johnston to Juan Cervantes.
CGX:80	XI:137	XIII:56	4	8/17/82	Letter: George Johnston to Juan Cervantes, and seniority List
CGX:81	XII:30	XII:30			UFW bumber sticker.
CGX:82	XII:89	XII:90	33		Flat maps of Tex-Cal. Properities.
CGX:83	XII:89	XII:90			Payroll labor distribution Sheets.
CGX:84	XII:89	XII:90			Payroll labor distribution Sheets.
CGX:85	XII:89	XII:90	69		Employment applications.
CGX:86	XII:89	XII:90	41		Employment applications.
CGX:87	XII:89	Withdrawn XIII:15			Transcript of part of trespass arrest tape.
CGX:88	XIII:6	XIII:14	3		Transcript of part of trespass arrest tape, with corrections.
CGX:89	XIII:30	XIII:14	1		Flat map of Road 168 & Ave. 64.
CGX:90	XIII:53	XIII:75	3		Charge 80-CE-199-d
CGX:91	XIII:54	XIII:91	1		Warning notice to L. Rodriguez.
CGX:92	XIII:54	XIII:103	1		Warning notice to L. Rodriguez, et. al.
CGX:93	XIII:46	XIV:56			Photo of machinery (ripper)
CGX:94	XIII:46	XIV:54	1		Diagram of machinery (augur)
CGX:95	XIII:46	XIV:62			Photo of machinery (disc).
CGX:96	XIII:46	XIV:62			Photo of machinery (3-point disc)

Appendix C (continued)

GENERAL COUNSEL'S EXHIBITS

Ex. #	Marked For I.D.	Admit. Evidence	# Pages	Date	Description
CGX:97	XIV:46	XIV:63	1		Flat map of Rd. 144 & Ave. 32.
CGX:98	XVII:64	XVII:89	3	8/20/80	Charge 80-CE-128-D
CGX:99	XVII:64	XVII:107	1	8/20/82	Warning notice to H. Melendez, Et al.
CGX:100	XVIII:64	Withdrawn XXXI:117	19		Photograph album.
CGX:101	XIX:1	XXIII:1	45	1981	Lefler payroll records.
CGX:102	XIX:1	XXIII:1	184	1982	Lefler invoices.
CGX:103	XIX:1	XXIII:1	72	1982	Lefler invoices.
CGX:104 (A-D)	XIX:81	XXIII:2			Photos of harvester, tractor, And dirt road.
CGX:105	XIX:90	XXI:100	1		Diagram of Ranch 67
CGX:106	XIX:120	XXIII:2	1	6/2/82	Warning notice to S. Reyes.
CGX:107	XIX:120	XXIII:3	1	6/3/82	Letter: D. Caravantes to S. Reyes
CGX:108	XIX:121	XIX:123	1	10/8/82	Letter: G. Johnson to S. Reyes.
CGX:109	XX:16	XX:18			Photo of truck and driver.
CGX:110 (A-E)	XXI:5	XXI:125			Photo of tractor
CGX:111 (A-E)	XXI:5	XXI:126			Photos of harvester.
CGX:112	XXI:60	XXI:100	1		Diagram of Ranch 67.
CGX:113	XXI:60	XXI:125	1		Diagram of Ranch 67.
CGX:114	XXI:111	XXI:125			Photo of harvester.
CGX:115	XXI:122	XXI:123	1	10/13/82	Letter: D. Caravantes to J. Carvantes.
CGX:116	XXIII:55	XXIII:56	1		Diagram of Ranch 40.
CGX:117	XXIII:100	XXIV:1	1		Diagram of Ranch 67.
CGX:118	XXIV:1	XXIV:26	1		Stamp from grape box.
CGX:119	XXV:1	XXXI:35	17sets 1982		Tex-Cal original proposal

Appendix C (continued)

GENERAL COUNSEL'S EXHIBITS

Ex. #	Marked For I.D.	Admit. Evidence	# Pages	Date	Description
CGX:120	XXV:1	XXXI:35	52	1982	Proposal agreed to.
CGX:121	XXV:1	XXXI:35	19sets	1982	UFW original proposal.
CGX:122	XXV:1	XXVII:39	66	8/22/82	Payroll Labor distribution lists
CGX:123	XXV:1	XXXI:35	14sets	1982	Bargaining information.
CGX:124	XXV:1	XXV:53	1	10/8/82	Dues settlement.
CGX:125	XXV:1	XXV:50	1	7/19/82	Letter: J. Carvantes to D. Carvantes.
CGX:126	XXV:1	XXV:50	1	6/2/82	Letter: D. Caravantes to UFW, re Grievance 82-6.
CGX:127	XXV:1	XXXI:40	1	1982	Juan De La Cruz plan.
CGX:128	XXV:1	XXV:42	1	6/2/82	Letter: D. Caravantes to UFW, re Grievance 82-3.
CGX:129	XXV:1	XXV:42	1	7/2/82	Letter: J. Carvantes to D. Carvantes, re Grievance 82-3
CGX:130	XXV:1	XXV:46	9	8/23/82	Letter: Munoz to Duran, and Payroll register.
CGX:131	XXV:71	XXV:73	1	3/25/82	Letter: B. Maddock to R. Steele.
CGX:132	XXV:71	XXV:73	1	4/15/82	Letter: D. Caravantes to UFW, (B. Maddock).
CGX:133	XXV:71	XXV:73	1	4/15/82	Letter: D. Caravantes to D. Miller.
CGX:134	XXVII:76	XXVIII:1	2	8/5/82	Letter: D. Caravantes to D. Miller.
CGX:135	XXVII:76	XXVIII:1	19	9/7/82	Tex-Cal list: Thinning.
CGX:136	XXVII:77	XXVIII:1	17	8/10/82	Tex-Cal list: Picking & Packing.
CGX:137	XXVIII:43	XXXI:41	2		Acreage of young vines.
CGX:138	XXVIII: 113	XXI:123	3		Common surgical procedures re RFK medical plan.
CGX:139	XXX:48	XXX:50	91	Nov&Dec 1980-81	Payroll labor distribution Sheets for tractor drivers.

Appendix C (continued)

GENERAL COUNSEL'S EXHIBITS

Ex. #	Marked For I.D.	Admit. Evidence	# Pages	Date	Description
CGX:140	XXX:48	XXX:50	7	12/81	Lefler invoices to Tex-Cal.
CGX:141	XXX:145	XXX:150	1	8/12/82	List of applicants.
CGX:142		Withdrawn XXXI:66			
CGX:143	XXXI:67	XXXI:72	2		List of names.
CGX:144	XXV:143	XXV:143	4 book-lets		Health plan booklets.
CGX:145	XXV:143	XXV:143	10		ORO Plan booklet.
CGX:146	XXXVIII:10	XXXVIII:11	1		Flat map of Ranch 74.
CGX:147	XLII:16	XLVI:103	4	8/9/82	Warning notices.
CGX:148	XLIV:110	XLIV:114	59	8/29/82	Payroll labor distribution Sheets.
CGX:149	XLV:12	XLV:13		1981	Payroll labor distribution Sheets – swamping crews.
CGX:150	XLV:17	XLV:18	46		Summary of RFK medical plan A.
CGX:151	XLV:17	XLV:18	54	10/9/81	Summary of RFK medical plan C.
CGX:152	XLV:17	XLV:18	9	1979	RFK plan tax and insurance Forms (form 5500).
CGX:153	XLV:17	XLV:18	8	1980	RFK plan tax and insurance Forms (form 5500).
CGX:154	XLV:20	XLV:20	42	5/21/82	Transcript of negotiation session.
CGX:155	XLV:46	XLV:47	11	5/28/82	Transcript of negotiation session.
CGX:156	XLV:62	XLV:62	2	6/10/82	Transcript of negotiation session.
CGX:157	XLVII:100	XLVII:100	1	6/7/81	Payroll Labor distribution sheets.

(End General Counsel's Exhibits)

Appendix D

RESPONDENT'S EXHIBITS

Ex. #	Marked For I.D.	Admit. Evidence	# Pages	Date	Description
RX:1	Pre-hear.		70	7/13/82	Motion to defer proceedings.
RX:2	Pre-hear.		6	7/6/82	Petition to revoke subpoena 852-D.
RX:3	Pre-hear.		6	7/6/82	Petition to revoke subpoena 853-D.
RX:4	Pre-hear.		7	7/6/82	Petition to revoke subpoena 853-D.
RX:5	Pre-hear.		6	7/6/82	Petition to revoke subpoena 853-D.
RX:6	Pre-hear.		6	7/6/82	Petition to revoke subpoena 853-D.
RX:7	Pre-hear.		12	7/6/82	Petition to revoke subpoena 853-D.
RX:8	II:3			9/30/82	Motion to defer proceedings to arbitration.
RX:9		Withdrawn XVII:24			
RX:10	XVII:7	XVII:20	25	1980	Labor distribution sheets.
RX:11	XVII:7	XVII:20	24	1981	Labor distribution sheets.
RX:12	XVIII:4	Withdrawn XVII:95	1	10/19/81	Warning notice to H. Melendez.
RX:13	XVIII:4	Withdrawn XVII:95	1	11/2/81	Warning notice to H. Melendez.
RX:14	XXXIV:39	XXXIV:56	1	6/23/81	Cover on warning book
RX:15	XXXIV:39	Rejected XXXIV:59 Withdrawn XLVII:96	17		Warning notices.
RX:16	XXXIV:100	XLVII:96	5		Notes by G. Johnston.
RX:17	XXXIV:114	XXXVI:115	2		Personal information form.
RX:18	XXXIV:122	XXXVI:129	1	6/22/81	Leaflet: "Tex-Cal is Afraid to Answer these Questions.
RX:19	XXXIV:122	XXXVI:131	1		Leaflet.

Appendix D (continues)
RESPONDENT'S EXHIBITS

Ex. #	Marked For I.D.	Admit. Evidence	# Pages	Date	Description
RX:20	XXXIV:154	XXXIV:154			Photo of jailhouse.
RX:21	XXXIV:162	XLVVII:96		1982	Computer printouts-efficiency Report.
RX:22	XXXIV:164	XXXIV:166	1	8/24/82	Tex-Cal Crew 64.
RX:23	XXXV:8	XLVII:97	3	1981	Seniority list-swampers.
RX:24	XXXV:107	XLVII:97	3	12/31/81	Crew 71, YTD Picking and Packing Seniority list.
RX:25	XXXV:112	XXXV:117	1	6/29/81	Letter: Vetter to Johnston.
RX:26	XXXV:113	XXXV:117	1	8/29/81	Swamper' driving records.
RX:27	XXXV:116	XXXV:117			Photo of trucks.
RX:28	XXXV:120	XXXV:121	84	12/30/81 12/31/81	Detail Labor distribution for Arvin ranches.
RX:29	XXXV:125	XLVII:97	14	12/31/81	Detail Labor distribution – J.M. Rodriguez.
RX:30	XXXV:138	XXXV:130	1		UDD form for M. Galindo
RX:31	XXXV:139	XL:9	1	7/27/82	Daily time sheet crew 64.
RX:32	XXXV:139	XXXV:139			Photo of truck.
RX:33	XXXV:146	XXXV:148			Photo of packing tables with bumber stickers.
RX:33	XXXVI:65	XLVII:98	3	7/8/82 7/8/82	Letters: J. Cervantes to D. Caravantes; L. Tipton to J. Cervantes
RX:35	XL:10	XLVII:98	3		Crew 84 list, with notes.
RX:36	XL:52	XL:52	1	8/5/82	Warning notices.
RX:37	XL:55	XL:57	1	8/9/82	Crew 64 notes.
RX:38	XL:62	XL:64	3	8/20/82	Crew 64 notes.
RX:39	XL:70	XL:72	4	8/20/82	Monthly
RX:40	XL:77	XL:81	41	June-October 1980-82	Monthly weather summaries.
RX:41	XL:81	XL:81	4	2/82	Monthly weather summaries.

Appendix D (continues)

RESPONDENT'S EXHIBITS

Ex. #	Marked For I.D.	Admit. Evidence	# Pages	Date	Description
RX:42	XL:83	XL:85	1	10/8/82	Employee master list (p.260)
RX:43	XL:85	XL:88	2	12/27/81	Employee quarterly earnings.
RX:44	XL:95	XL:96	2	8/16/82	Warning notices.
RX:45	XL:99	XL:103		1980-82	Computer printouts—hours and boxes by crews.
RX:46	XL:105	Withdrawn XLVII:99	3	1980-82	Inventory summary.
RX:47	XLI:57	XLI:63	4	11/14/82	Swamper seniority list, crew 71, Picking and Packings
RX:48	XLI:58	XLI:63	3	12/31/80	Swamper seniority list, crew 71, Picking and Packings
RX:49	XLI:65	XLI:66	1	2/27/82	Personal information form—R. Rodriguez.
RX:50	XLI:120	XLII:72	1		Economic package.
RX:51	XLI:138	XLII:72	5	11/24/82	RFK plan, Article 30, Letters: D. Caravantes to Miller.
RX:52	XLII:97	XLII:98	3	5/28/82	Partial transcript of negotia -tig session.
RX:53	XLIII:31	XLIII:32	9	1981-82	Damage warnings.
RX:54	XLIII:31	XLIII:32	24	1981-82	Quality warnings.
RX:55	XLV:87	XLV:93	3	6/13/82	Letter: D. Caravantes to J. Carvantes
RX:56 (A-B)	XLV:96	XLV:96			Photos of bumbers of truckers.
RX:57	XLV:102-103	XLV:102-103	11	12/10/82	Answer to Fourth Amended Com-plaint.
RX:58	XLVI:5	Withdrawn XLVII:99		11/24/81	Letter: L. Lopez to Tex-Cal.
RX:59	XLVII:6	XL:57	3	2/26/80	Acknowledgement of right of Lessee to encumber.
RX:60	XLVII:6	XLVII:51	3	2/16/79	UCC-2 form.
RX:61	XLVII:6	XLVII:46	5	1/9/78	Marketing agreement.

Appendix D (continues)

RESPONDENT'S EXHIBITS

Ex. #	Marked For I.D.	Admit. Evidence	# Pages	Date	Description
RX:62	XLVII:6	XLVII:46	5	7/24/78	Marketing agreement.
RX:63	XLVII:6	XLVII:46	6	1/1/80	Marketing agreement.
RX:64	XLVII:6	XLVII:46	6	1/1/81	Marketing agreement.
RX:65	XLVII:6	XLVII:46	6	1/1/82	Marketing agreement.
RX:66	XLVII:6	XLVII:30	6	9/7/82	Letter: Dennison to Miller
RX:67	XLVII:6	XLVII:32	1	7/14/82	Deposit slips.
RX:68	XLVII:34	XLVII:99	50	1/1/80	Letter: Tex-cal to UFW.

(End Respondent's Exhibits)

Appendix E
CHARGING PARTY'S EXHIBITS

Ex. #	Marked For I.D.	Admit. Evidence	# Pages	Date	Description
CPX:1	IV:97	IV:106 V:83	1		Warning Notice (S. Reyes)
CPX:2	V:82	V:83	1		List of rules.

(End Charging Party's Exhibits)

Appendix E

ADMINISTRATIVE LAW OFFICER EXHIBITS

Ex. #	Marked For I.D.	Admit. Evidence	# Pages	Date	Description
ALOX:1	XXXVII:19	XXVII:20	1	1982	RFK Plan contributions.

(End Administrative Law Officer's Exhibits)